

**REPORT OF AFGE LOCAL 421 TO CHAIRMAN WELLINGHOFF
ON FINDINGS OF BIAS AND DISPARATE TREATMENT OF EMPLOYEES
UNDER FERC'S PERFORMANCE RATING SYSTEM, 2004 TO 2008**

November 2009

**Report of AFGE Local 421 to Chairman Wellinghoff
on Findings Of Bias and Disparate Treatment of Employees
under FERC's Performance Rating System, 2004 to 2008**

I. Overview of Major Findings

Based on its analysis of data supplied by the Human Resources Division of the Commission's Executive Director's office, American Federation of Government Employees (AFGE) Local 421 (Union) has identified several disparities in performance ratings during the period 2004 through 2008. The Union believes strongly that these disparities are disturbing and merit the attention of the Commission's management. The Union is also ready to assist management in addressing these concerns and taking appropriate remedial steps.

The major findings/trends include:

- ***Bias in favor of supervisory staff:*** Supervisory staff were given significantly higher performance ratings than non-supervisory staff. Over half of the supervisory staff, 52 percent, were rated Outstanding while only 25 percent of non-supervisory staff were rated Outstanding. The average performance ratings of supervisory and non-supervisory staff were 1.69 (Highly Successful) and 1.42 (Fully Successful) respectively. This bias is also observed in the average and the distribution of ratings within each office.
- ***Evidence of quotas:*** Is the observed consistency in the average ratings across the five year period—1.66, 1.69, 1.69, 1.69, and 1.72 for supervisory and 1.42, 1.42, 1.41, 1.43, 1.44 for non-supervisory—coincidental or are there forces, implicit or explicit, intentional or unintentional, that generate these results. This consistency is also observable in the yearly distribution of ratings for these groups.
- ***Bias in favor of white staff members:*** White staff members, both supervisory and non-supervisory, were rated significantly higher than non-white staff members. The average performance ratings for white and minority supervisory staff were 1.74 and 1.64, respectively. For non-supervisory staff, the average performance ratings for white and minority staff were 1.50 and 1.34, respectively. While no discernible trend was observed in the ratings of non-supervisory and non-white staff, the ratings of white supervisory staff rose from an average of 1.66 to 1.74 over the five year analysis period.
- ***Bias against older employees:*** There appears to be some age discrimination, particularly among non-supervisory staff. Non-supervisory employees experience a steady decline in their performance ratings beginning around age 50.
- ***Inter- and intra-office variations:*** Clear disparities exist in the distribution of and average performance ratings given employees from one office to another and

from one division to another within some offices. The average performance rating Commission-wide for all staff during 2004 to 2008 was 1.46. However, OAL and OGC consistently gave average ratings between 1.50 and 1.60, while the remaining offices save one had average ratings between 1.40 and 1.50. The average ratings in the Office of the Executive Director never exceeded 1.35 during the five year span. In reviewing average ratings across divisions within offices, clear and consistent disparities were found.

- ***Occupational disparities:*** Clear and consistent disparities were observed across job titles. Some consistently received average ratings in the Highly Successful range while most received average ratings in the Fully Successful range.
- ***Bias against handicapped:*** Across the years, for both supervisory and non-supervisory, handicapped employees appear to receive ratings lower than those with no handicap.

II. Background

On April 7, 2009, AFGE Local 421 sent a letter to FERC Chairman Wellinghoff congratulating the Chairman on his recent appointment to the Chairmanship and expressed its willingness to work with the Chairman in the coming years. The Union also raised a number of issues of concern to its membership. Those issues included: (1) the likelihood of a performance rating quota system; (2) opportunities for current employees to advance within certain career paths and to make lateral moves when appropriate; (3) effects of contracting out agency functions, which has resulted in elimination of federal jobs and transfer of existing employees; (4) unfair implementation of the Flexiplace Program FERC-wide; and (5) effects of the Equal Employment Opportunity (EEO) Advisor reporting to the Executive Director rather than to the Chairman. In this report, the Union considers the first issue listed above, the potential existence of a performance rating quota system in which employees are rated the same year after year regardless of their actual work performance.

Chairman Wellinghoff responded to the Union's letter on April 24, 2009. The Chairman stated that "I would be happy to meet with you to discuss the issues that you outlined in your letter of April 7, 2009. However, before we meet I would like detailed information on all subjects that you would like to discuss so that I can be fully prepared for our meeting." The Chairman also stated that he had asked FERC Executive Director Tom Herlihy to work with the Union to ensure that the Chairman and the Union would have all the information needed to have an informed discussion of the various issues.

In line with the Chairman's invitation to gather the information needed to have an informed discussion of the Commission's performance rating system, the Union on May 7, 2009 sent a letter requesting certain employee data to Mr. Sidney Chapman, Branch Chief, Labor and Employee Relations, Human Resources (HR) Division of the Office of the Executive Director. The Union requested the following data covering the last five annual reviews ending with 2008 for each non-supervisory employee in each office broken down by division: numerical performance rating, (*i.e.*, 1.0, 1.125, 1.25, ... 2.00), race, age, gender, disability, job title, grade level, office and division, tenure at FERC, and tenure within the Federal Government. The Union also requested the same data for supervisory employees in each office, although not broken down by division.

On September 23, 2009 Mr. Chapman responded to the Union's letter, providing the requested data for FERC employees for the period 2004 through 2008. As the supplied data included employees' performance rating category (*i.e.*, Outstanding, Greater than Fully Successful, Fully Successful, etc.) rather than the numerical rating requested by the Union, the Union's analysis converted the category ratings to approximate the numerical ratings based on the Commission's rating system.

III. Analysis and Findings

A. Introduction

FERC's performance appraisal program, as with most of the Federal Government, relies on performance standards under which managers are supposed to objectively grade their employees. But, as any thinking person understands, no one is without biases and performance ratings are, by their nature, subjective. Such biases occur in FERC's performance appraisal program as the results of the Union's analysis of the last five year's data clearly show.

The rating system used by FERC, and most of the Federal Government, has five categories—Outstanding, Highly Successful, Fully Successful, Minimally Successful, and Unacceptable—though there are a number of variations in the terms used to describe the different levels. However, as seen below, in practice at FERC and probably elsewhere, virtually all employee ratings fall within the former, or top, three ratings. Very few employees are rated below Fully Successful and, presumably, those that are either improve or are fired. Thus, theoretically, the rating system has five categories. Practically, however, only three are used for the vast majority of employees.

In this report, we evaluate bias or discrimination in FERC's performance appraisal system. The data in this report challenges HR's concept of "Meaningful Distinctions," especially its statement that they are based on relative performance. (from "Your Role in the Employee Performance Appraisal System," the Fall 2009 required staff training) The question the Union asks is "Relative to what?" This report evaluates FERC staff performance ratings relative to the following "Meaningful Distinctions":

1. Staff Hierarchy
2. Race
3. Age
4. Gender
5. Occupation
6. Handicap
7. Grade Level
8. Inter-Office
9. Intra-Office

A priori, we do not and should not expect to observe significant differences in performance ratings based on any of the above distinctions. Supervisory staff should not get significantly different ratings than non-supervisory staff. White staff should not get significantly different ratings than non-white staff. Etc. What we found in the performance appraisals given over the last five years is not consistent with those expectations.

B. Data and Methodology

The data provided by HR included data on all supervisory, except SES, and non-supervisory FERC employees for the years 2004 through 2008. The data elements included for each employee record for each year are as follows:

Supervisory – Office, Title, Grade, Ethnic Group, Gender, Age, FERC Years of Service, Federal Years of Service, Disability, and Performance Rating.

Non-Supervisory – Office, Division, Title, Grade, Ethnic Group, Gender, Age, FERC Years of Service, Federal Years of Service, Disability, and Performance Rating.

The number of records in HR’s dataset for supervisory and non-supervisory staff for each year:

	2004	2005	2006	2007	2008	Total
Supervisory	156	167	174	167	177	841
Non-Supervisory	1090	1072	1139	1083	1235	5619

After reviewing the data, certain adjustments were made to improve the usefulness of the data. We made the following adjustments:

- Deleted records for which the Performance Rating was listed as “NULL” (580 records);
- Deleted records for Commissioners’ Office personnel on the basis that they would not be representative of a non-political office (103 records)¹;
- Merged records for two sets of offices based on what was primarily a name change during the five year assessment period: OMOI and OE and OMTR and OEMR;
- Merged the Office of the Secretary (OS) in 2004 into the Office of the Executive Director (OED);
- Assumed that the rating category of “Presumed Fully Successful” was equivalent to “Fully Successful or Equivalent”;
- Converted Grade = 0 to Grade = 16 to reflect that these employees have salaries above the GS-15 level; and
- In most statistical inter and intra office comparisons, OALJ, OEA, OEPI, and OER were dropped due to the small number of employees in those offices and/or

¹ As shown from the numbers listed above, the deletion of the NULL records and the records for the Commissioners’ offices represented less than 10 percent of the total number of records.

because they were in existence for only one or two years of the five year period studied;

The explanation for records with “NULL” and “Presumed Fully Successful” ratings appears to be that the employees worked for FERC for less than one year though there were a few of those records for which that was not true. In any event, excluding the NULL and placing the Presumed Fully Successful with Fully Successful cannot be expected to distort the remaining data.

We also made other changes to the data for specific comparisons. Some job titles were reworded to eliminate unnecessary distinctions, e.g., Attorney Advisor (General) and Attorney Advisor (Public Utilities) were renamed simply Attorney Advisor. In some cases, there were simply typographical errors that, without correction, produced distinct categories with only one employee.

C. Measures of Bias

We use two primary measures for evaluating bias at the Commission: average (mean) and distribution. We believe these statistics establish a *prima facie* case of discrimination or bias.

1) Average Performance Rating

We measure the average of the performance ratings for a group (e.g., supervisory staff) by first translating each employee’s adjective rating (Unacceptable – Outstanding) to its numerical rating equivalent (0.0 – 2.0). In the data provided to the Union by HR, the adjective ratings supplied by HR were converted to numerical ratings as follows:

2.0	= Outstanding or Equivalent
1.5	= Greater Than Fully Successful
1.0	= Fully Successful or Equivalent or Presumed Fully Successful
0.5	= Less Than Fully Successful
0.0	= Unacceptable

Using these numerical ratings for each employee, we then compute the mean average numerical rating for different groupings of employees, e.g., by office. We look at averages both on year-by-year and five-year average bases. Using these mean values we can compare two or more groups or we can estimate the average adjective rating for a group. The average adjective ratings are based on the Commission’s Summary Rating Scale as follows:

1.75 – 2.00	= Outstanding
1.50 – 1.74	= Highly Successful
1.00 – 1.49	= Fully Successful
0.50 – 0.99	= Minimally Successful
0.00 – 0.49	= Unacceptable

Finally, when differences were observed between groups, we have performed some statistical tests to evaluate whether the differences are significant and to what level of confidence.

2) Distribution of Performance Ratings

Comparing the distribution of performance ratings for one group with another involves no translation of ratings except to equalize “Fully Successful or Equivalent” with “Presumed Fully Successful.” The distribution of ratings simply counts the number in each group that were given an “Outstanding,” the number given “Highly Successful,” etc. and then determining the percentage of that group achieving each rating category. As with the averages, we look at the distributions on year-to-year and five-year average bases.

3) Statistical Tests of Significance

For a number of the comparisons, we performed statistical tests to evaluate whether the observed differences between groups were statistically significant. The tests we have performed so far indicate that the observed differences are significant to a high level of confidence.

An important caveat. The statistical analyses in this report are primarily one, or sometimes, two dimensional. We have not, to date, attempted to design more multivariate statistical models that might further enlighten our understanding of our current findings. However, given that virtually all of the univariate comparisons show evidence of discrimination, it is difficult to imagine that any multivariate analysis will negate that evidence or show a reversal in the direction of discrimination.

We turn now to some specific findings.

D. Findings on Hierarchical Bias

Table 1 shows that, for each of the last five years, supervisory staff were given average performance ratings significantly higher than those given to non-supervisory staff. Using the Summary Rating Scale (above), the average rating given to supervisory staff was in the range of Highly Successful (1.50 – 1.74) in each of the five years. In contrast, non-supervisory staff achieved average ratings of only Fully Successful (1.00-1.49). In each year, supervisory staff were rated approximately 20 percent higher than non-supervisory staff.

Table 1. Average Performance Ratings

All FERC Staff	2004	2005	2006	2007	2008	Average
Supervisory Staff	1.66	1.69	1.69	1.69	1.72	1.69
Non-Supervisory Staff	1.42	1.42	1.41	1.43	1.44	1.42

A second observation raises other concerns. The ratings for supervisory staff and for non-supervisory staff are amazingly similar from year-to-year during this period. Is the consistency in the average ratings across the five year period coincidental or are there forces, implicit or explicit, intentional or unintentional, that generate those results? Is it evidence of a quota system or is there another explanation for this phenomenon? This consistency is also observable in the ratings distribution over the five year period. (See the discussion of Table 3 below.)

Table 2. 5-Year Average Distribution of Performance Ratings (%)

All FERC Staff	U	MS	FS	HS	O
Supervisory Staff	0	0	14	33	52
Non-Supervisory Staff	0	0	39	35	25

Table 2 supports the previous table by showing that, over the five years more than twice as many supervisory employees obtained an Outstanding rating than non-supervisory employees—52% versus 25%. In contrast, almost three times as many non-supervisory employees were given a rating of Fully Successful—39% versus 14%.

If one takes the position that the ratings that were given accurately measured the relative performance of the two groups, it would mean that the difference between supervisory and non-supervisory is a “meaningful distinction,” and that supervisory staff consistently outperform non-supervisory staff. Furthermore, a Fully Successful rating is more “valued and rewarded” if it goes to a non-supervisory employee. It seems more likely that either (1) supervisory staff give each other higher ratings than they give the staff that work for them or (2) supervisory staff are held to lower standards than are non-supervisory staff. The implications for promotions, higher salaries, and higher bonuses for supervisory staff are obvious. Bottom line, it appears that not only do supervisory staff get higher grade levels (and salaries), they likely get higher bonuses.²

Another important point should be taken from this table. Virtually no one gets a rating of less than Fully Successful. This can be interpreted in at least a couple of ways. First, like in school, students are given grades of A, B, or C. If one believes the ratings given to FERC employees are unbiased and reflective of each employee’s performance, the majority of supervisory employees are A students while far more non-supervisory employees are C students.

A second perspective says that each employee is rated average, below average or above average. Only three categories are used, as with the A, B, and C grades. However, looking at Table 1, the average rating for supervisory employees is at the upper end of the Highly Successful range (1.50 – 1.74). Non-supervisory employees, however get an

² The Union is seeking data on bonuses to continue its analysis of the effects of the biases found in the performance rating system.

average rating in the Fully Successful range. It seems that a non-supervisory employee can get a Fully Successful even if her work was considered above average. In contrast, any Fully Successful rating for a Supervisor is indicative of below average performance.

Senior Executive Service

OPM recently completed its annual review of the performance appraisal system for the Federal Government's cadre of senior executives.³ Over 90 percent of these executives are evaluated under a five tier system very similar to that of the more rank and file employees described above. While FERC-specific data is not available in OPM's review, it is noteworthy that many of the results observed above for FERC's supervisory employees are validated by the ratings of SES employees.

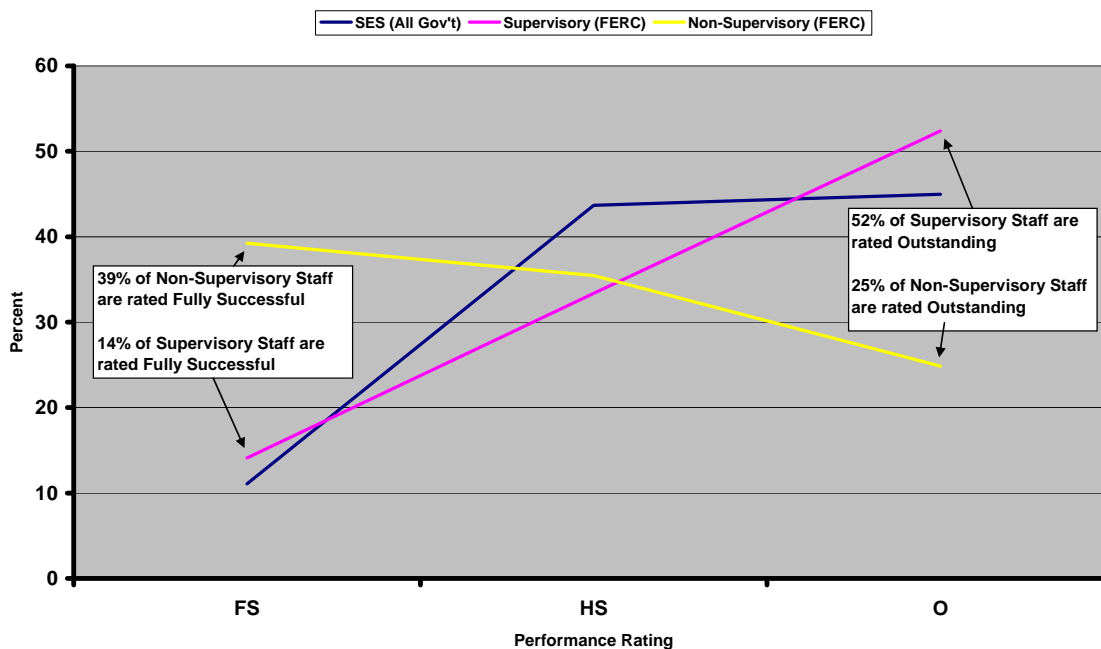
Table 3 and Chart 1 compare the distribution of performance ratings for All Government SES employees with FERC's supervisory and non-supervisory employees. While not as top-heavy with Outstanding performers as FERC's supervisory staff, on average about 89% of SES staff (government-wide) receive either a Highly Successful or an Outstanding rating compared to 85% of FERC supervisory staff. In contrast, 74% of non-supervisory employees received Highly Successful or lower ratings.

Table 3: Percent Distribution of Performance Ratings by Staff Level

Rating Level	5-Year Average Number	2004	2005	2006	2007	2008	5-Year Average
		Percent Distribution					
SES (All Gov't)							
1 (U)	1	N/A	0	0	0	0	0
2 (MS)	13	N/A	0	0	0	0	0
3 (FS)	607	N/A	13	12	10	9	11
4 (HS)	2392	N/A	43	45	43	43	44
5 (O)	2462	N/A	43	43	46	47	45
Supervisory (FERC)							
1 (U)	0	0	0	0	0	0	0
2 (MS)	0	0	1	0	0	0	0
3 (FS)	23	15	15	13	10	14	14
4 (HS)	54	33	31	36	37	33	33
5 (O)	85	53	54	51	53	52	52
Non-Supervisory (FERC)							
1 (U)	0	0	0	0	0	0	0
2 (MS)	4	1	0	0	0	0	0
3 (FS)	389	40	40	39	37	39	39
4 (HS)	351	34	37	36	37	35	35
5 (O)	246	25	23	25	26	25	25

³ "Report on Senior Executive Pay and Performance Appraisal System for Fiscal Year 2008" September 2009.

Chart 1. 5-Year Average Distribution of Performance Ratings by Staff Level



E. Ethnic/Racial Discrimination

We evaluated ethnic or racial discrimination by examining separately the ten different ethnic categories used to classify non-white employees and, since some ethnic groups had few people, by examining the aggregate of all non-white against all white employees. In both cases, our findings show significant evidence of adverse discriminatory impacts on minorities.

Table 4. Average Annual Performance Ratings, White and Non-White Supervisory and Non-Supervisory Staff

	2004	2005	2006	2007	2008	5-Year Average
White Supervisory	1.66	1.75	1.74	1.73	1.74	1.72
Non-White Supervisory	1.67	1.47	1.53	1.55	1.64	1.57
White Non-Supervisory	1.48	1.49	1.47	1.49	1.50	1.49
Non-White Non-Supervisory	1.32	1.30	1.30	1.31	1.34	1.31

Significant performance rating disparities between white and non-white ethnic groups is the norm at FERC. Adjusting for the supervisory/non-supervisory effect, performance ratings are still significantly higher for white employees than for non-white employees. In other words, non-white supervisory employees get significantly lower performance ratings than their white counterparts and the same is true for non-white non-supervisory relative to their white peers. This can be seen above in **Table 4**. It shows that, on

average, the differences between white supervisory and non-supervisory and between non-white supervisory and non-supervisory are 0.23 and 0.26 performance rating points, respectively, on a rating scale that varies predominantly between 1.00 and 2.00. Comparing white with non-white supervisory and white with non-white non-supervisory, the performance rating point differentials are 0.15 and 0.18, respectively.⁴ The largest disparity, 0.41, is that between white supervisory and non-white non-supervisory. These relationships are also presented in **Chart 2**, below.

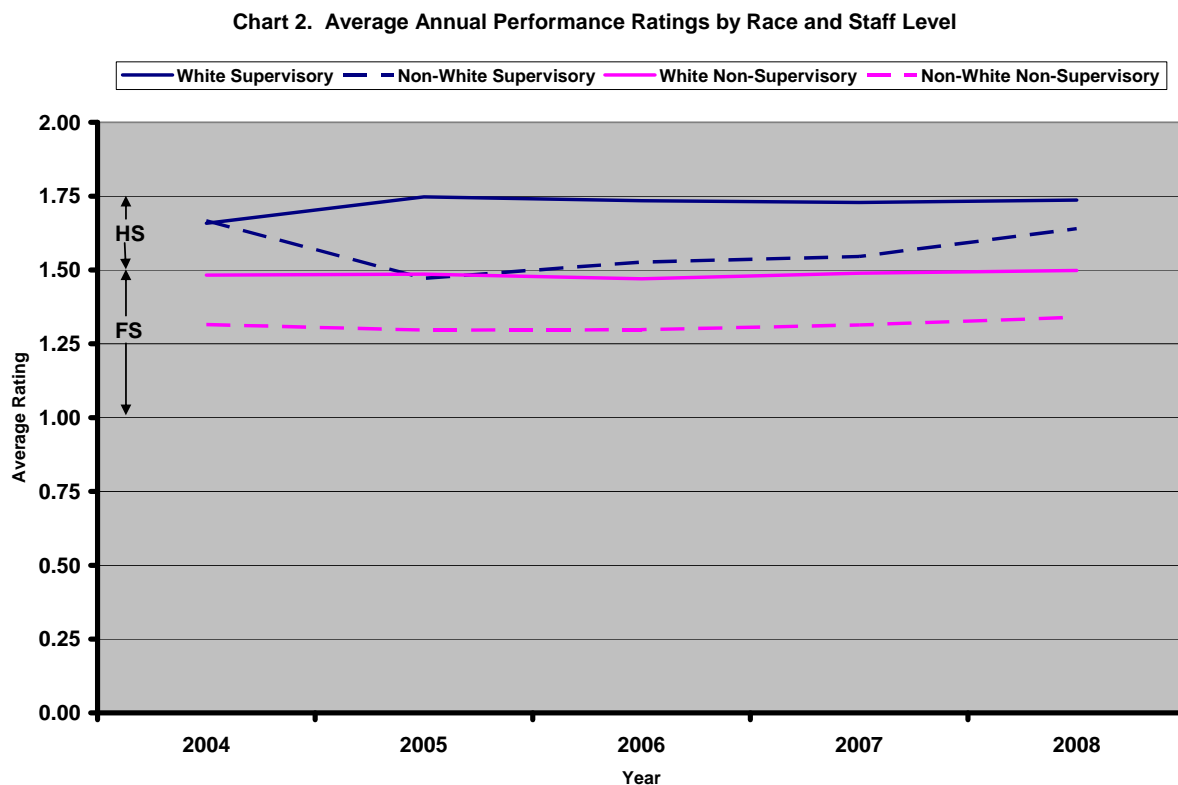


Table 5 and Chart 3 confirm that the white/non-white bias holds up across the GS grade levels. For both supervisory and non-supervisory employees, for each GS grade level, with only two exceptions (GS-9 and GS-14), whites outperform non-whites according to the performance ratings they received over the last five years. Interestingly, at the GS-15 and higher level, white non-supervisory employees are rated higher than non-white supervisors.

⁴ These values are based on Table 4's 5-Year average performance ratings. The difference between white supervisory and non-supervisory is $0.23 = 1.72 - 1.49$; between non-white supervisory and non-supervisory is $0.26 = 1.57 - 1.31$. Similarly, the difference between white and non-white supervisory is $0.15 = 1.72 - 1.57$; between white and non-white non-supervisory is $0.18 = 1.49 - 1.31$.

Table 5. 5-Year Average Performance Ratings by GS Grade Level

	5-Year Average										Average
	GS-6	GS-7	GS-8	GS-9	GS-11	GS-12	GS-13	GS-14	GS-15	>GS-15	
Supervisory											
White								1.60	1.75	1.68	1.67
Non-White								1.68	1.58	1.28	1.51
Non-Supervisory											
White		1.13	1.43	1.28	1.41	1.38	1.35	1.58	1.65	1.67	1.43
Non-White	1.10	1.11	1.34	1.30	1.31	1.33	1.26	1.50	1.45	1.58	1.33

Chart 3. 5-Year Average Performance Rating by Race and GS Level

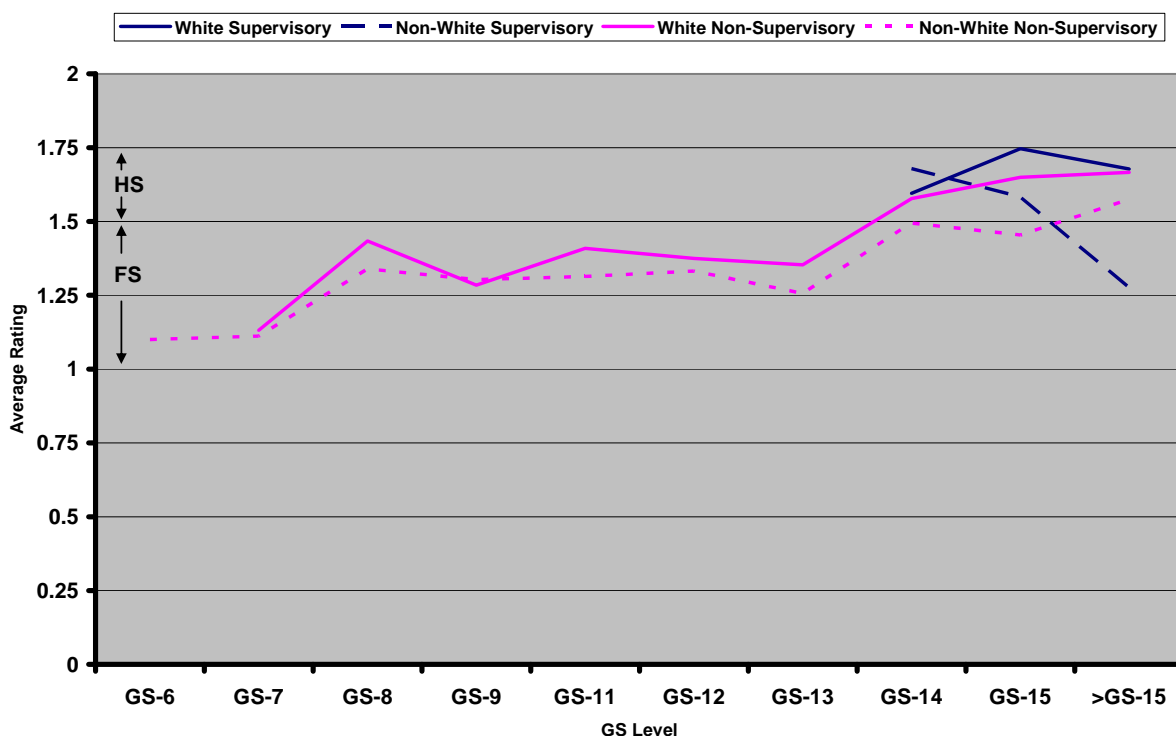


Chart 4 confirms the same relationship across all FERC offices by looking at the average distribution of ratings over the five year period. A higher percent of white non-supervisory employees get Outstanding compared to their non-white office cohorts while a higher percent of non-white non-supervisory employees get the Fully Successful rating than their white office cohorts. In the chart, this is shown by the higher preponderance of dashed lines (non-white) above the solid lines (white) for the Fully Successful rating and

a higher preponderance of dashed lines are below the solid lines for the Outstanding rating.

Chart 4. 5-Year Average Distribution of Performance Ratings of Non-Supervisory Staff by Office and Race

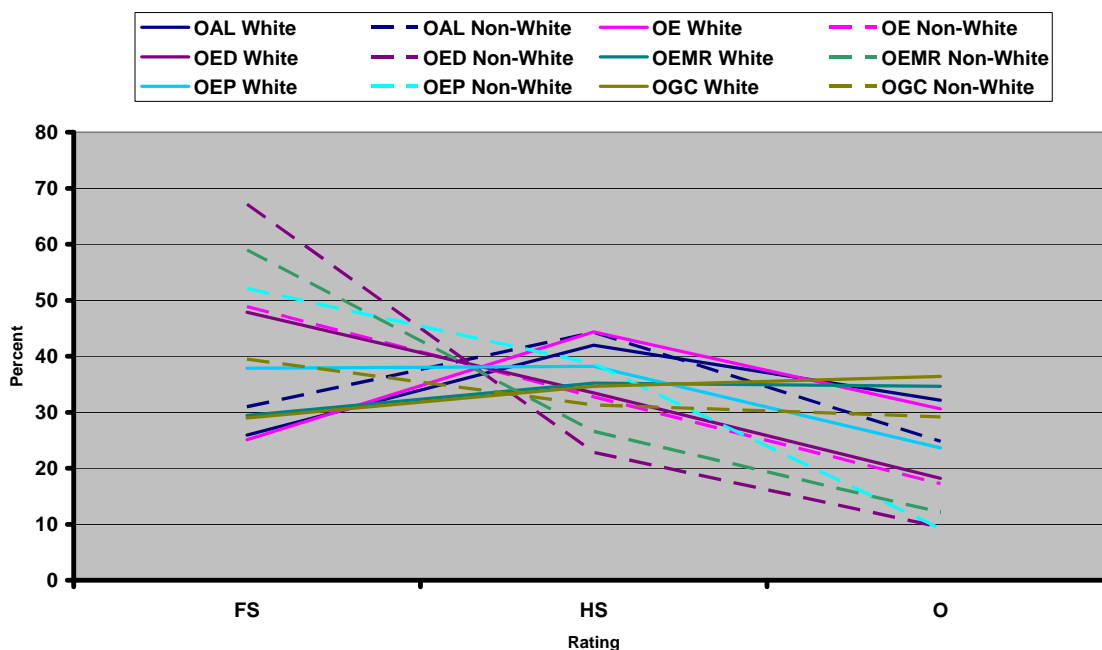


Table 6 gives the yearly average performance ratings for supervisory and non-supervisory staff for each of the Ethnic categories for which there are at least five employees. In virtually all comparisons of supervisory and non-supervisory staff, white staff received higher ratings than their counterparts with other ethnic backgrounds.

Table 6. Average Annual Performance Ratings by Ethnicity

Ethnicity	2004	2005	2006	2007	2008	5-Year Average
	Supervisory					
White	1.66	1.75	1.74	1.73	1.74	1.72
Asian	1.64	1.50	1.75	1.60	1.50	1.60
Black or African American	1.69	1.50	1.52	1.55	1.70	1.59
Hispanic or Latino	1.60	1.40	1.33	1.50	1.60	1.48
NEC		1.00	1.50	1.50	1.50	1.43
All Non-White Supervisory						1.52
All Supervisory	1.66	1.69	1.69	1.69	1.72	1.69

Ethnicity	2004	2005	2006	2007	2008	5-Year Average
Non-Supervisory						
White	1.48	1.49	1.47	1.49	1.50	1.49
American Indian or Alaska Native	1.30	1.07	1.20	1.25	1.29	1.22
Asian	1.31	1.30	1.33	1.42	1.38	1.34
Black or African American	1.32	1.30	1.29	1.28	1.33	1.30
Hispanic or Latino	1.23	1.33	1.36	1.34	1.37	1.32
NEC			1.33	1.44	1.40	1.40
All Non-White Non-Supervisory						1.32
All Non-Supervisory	1.42	1.42	1.41	1.43	1.44	1.42

F. Age Discrimination

While no clear trend in ratings occurs as supervisors age, non-supervisory staff suffer a slow but steady decline in their performance ratings beginning about age 50. **Table 7** shows the results for all FERC staff. The average rating for non-supervisory personnel is at a relative high of 1.46 for age group 50-54 but then it steadily declines to reach an average of 1.23 and 1.21 for the 65-69 and 70-74 age groups, respectively.

From the perspective of the number of Outstanding and Fully Successful ratings, 29% of non-supervisory staff aged 50-54 received an Outstanding rating over the five year period. This percentage declines to 26% for the 55-59 age group, 20% for 60-64, and 5% for 65-69. In contrast, 37% of non-supervisory staff aged 50-54 received a Fully Successful rating, followed by 40% for the 55-59 age group, 47% for 60-64, and 60% for 65-69. See Appendix for more detailed data and charts showing, among other things, that this age discrimination occurs with reasonable consistency at the individual office level.

Table 7. 5-Year Average Performance Ratings by Age Group

Age Group	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	65-69	70-74
Supervisory											
No.				11	14	30	46	37	18		
Rating				1.77	1.70	1.67	1.72	1.64	1.68		
Non-Supervisory											
No.	34	116	73	91	112	128	176	152	72	23	9
Rating	1.26	1.42	1.47	1.49	1.43	1.43	1.46	1.42	1.36	1.23	1.21

G. Gender Discrimination

We did not observe any data suggesting discrimination in performance ratings based on gender, commission-wide or at the office level. However, we did observe differences in the grade levels of male and female employees. The female/male ratio for all FERC staff was about 48/52. However, while 82% of men had grade levels higher than GS-13, only 54% of women were so situated. See the Appendix for data showing these disparities at the office level.

H. Occupational Bias

Our review of the performance rating data shows that there are about eight job categories where staff consistently get average ratings in the Highly Successful range. These job categories are: Administrative Officer, Legal Specialist, Program Analyst, Paralegal Specialist, Trial Attorney, Environmental Protection Specialist, Fishery Biologist, and Economist. In almost all other job categories, the average ratings are consistently in the Fully Successful range. See Appendix for detailed results.

I. Handicap Discrimination

The data shows that at both the supervisory and non-supervisory levels, employees with disabilities average significantly lower performance ratings over the five year period. While 55% of supervisory employees without handicaps obtained an Outstanding rating, only 41% of supervisory employees with handicaps obtained that rating. While only 26% of non-supervisory employees without handicaps got Outstanding, even fewer non-supervisory employees received that rating (20%). These relationships appeared consistently over each of the five years studied. See Appendix for details.

J. Grade Level Bias

The data shows that, generally, the higher the grade level, the higher the average performance rating. This is consistent with the analysis of the supervisor/non-supervisor split discussed earlier. See Appendix for details.

K. Inter-Office Differences

As with our findings relative to job categories, clear disparities exist in the distribution of and average performance ratings given to employees from one office to another. One striking observation about these numbers is that they appear very consistent across the five years and for supervisors and non-supervisors. Further work on these data may provide further evidence that a quota system is at work, at least in some offices, whether intentional or not. See Appendix for details.

L. Intra-Office Differences

Similar to the inter-office results, the data shows that within the offices some divisions consistently yield higher performance ratings than others. See Appendix for details.

IV. Conclusions

As noted above, in this report, the Union is presenting evidence of biases and disparate treatment of employees under the FERC performance evaluation system. The Union believes that some of the results presented herein should raise serious concerns among management. The Union is not attempting to offer comprehensive explanations for the disparate treatment of employees found in these data and is not accusing anyone of devious behavior.

However, it does appear that certain mindsets have become prevalent among management, affecting evaluations and leading to unfair results. In its recent presentation on the performance rating system, "Your Role in the Employee Performance Appraisal Program," HR said that "A Fully Successful rating is valued and rewarded." However, that rating does not appear to be valued when management rates other members of management, perhaps pointing to a "club mentality" among management. The evidence of racial bias, age discrimination, and bias against the disabled are counter to national civil rights policy and law. "Meaningful distinctions" should not mean unlawful discrimination.

The Union is ready to work with management on these issues. The Union believes that while these problems are serious, they can be addressed constructively and without recrimination.

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Appendix

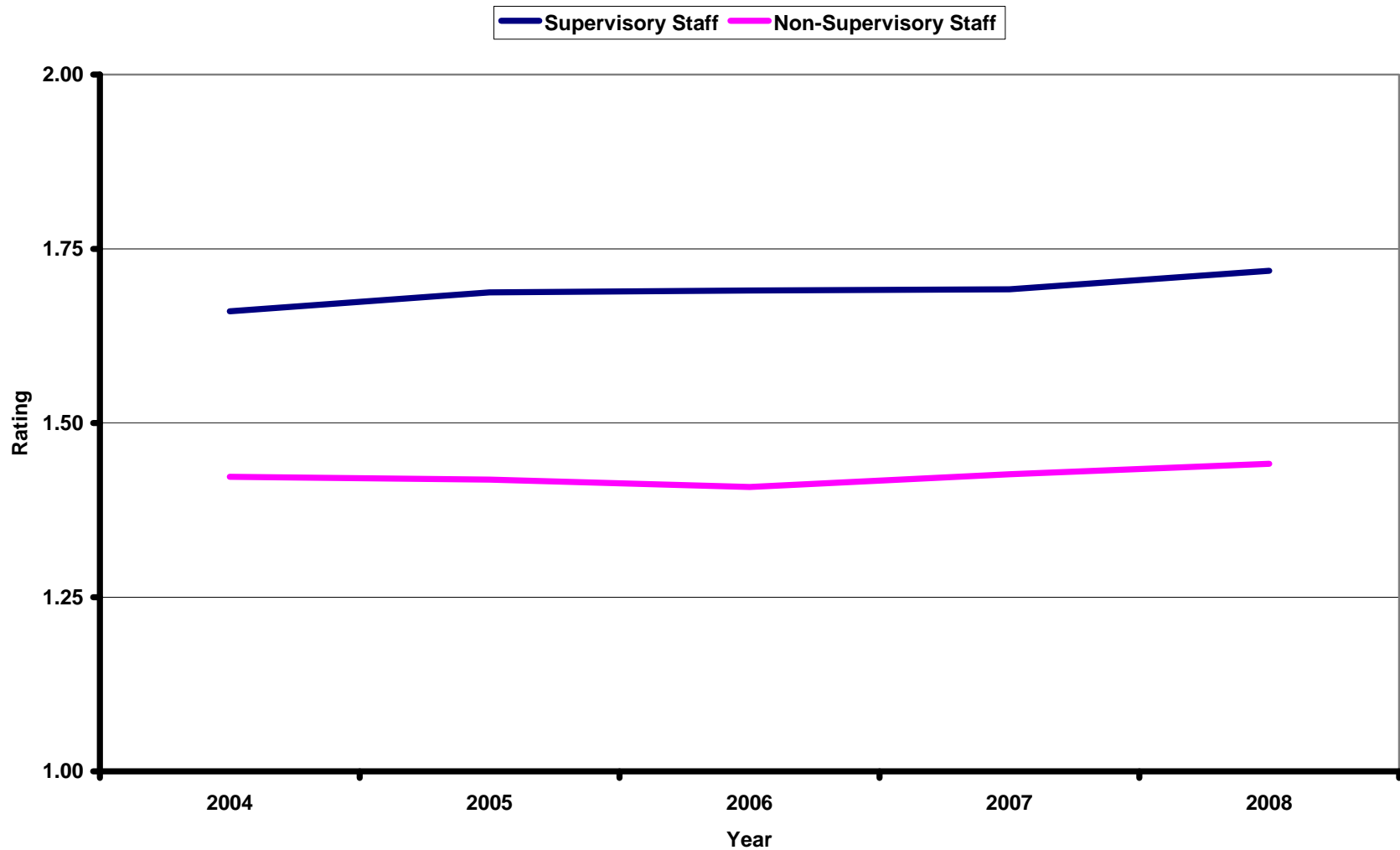
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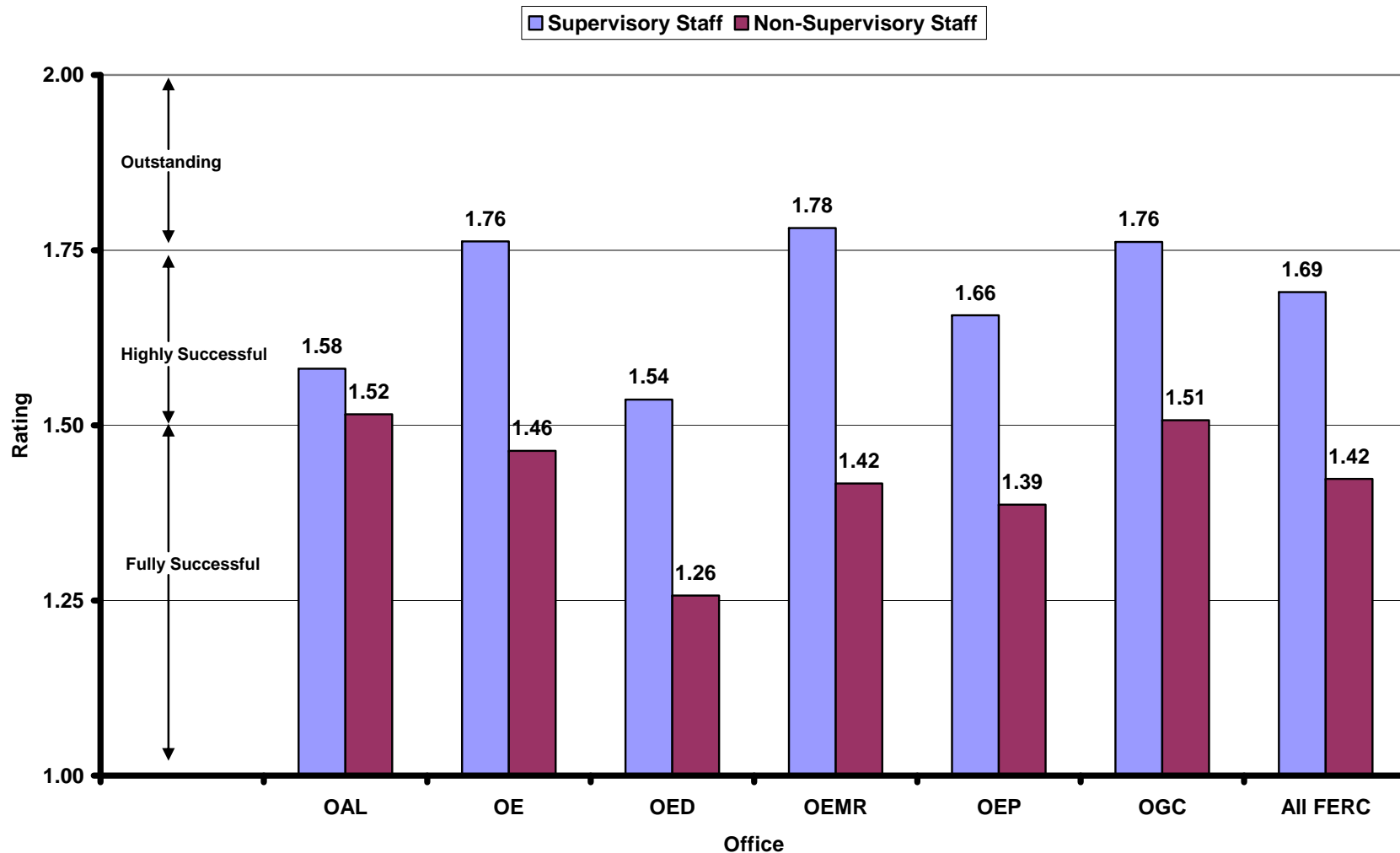
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Hierarchical Bias

Average Performance Ratings: All FERC

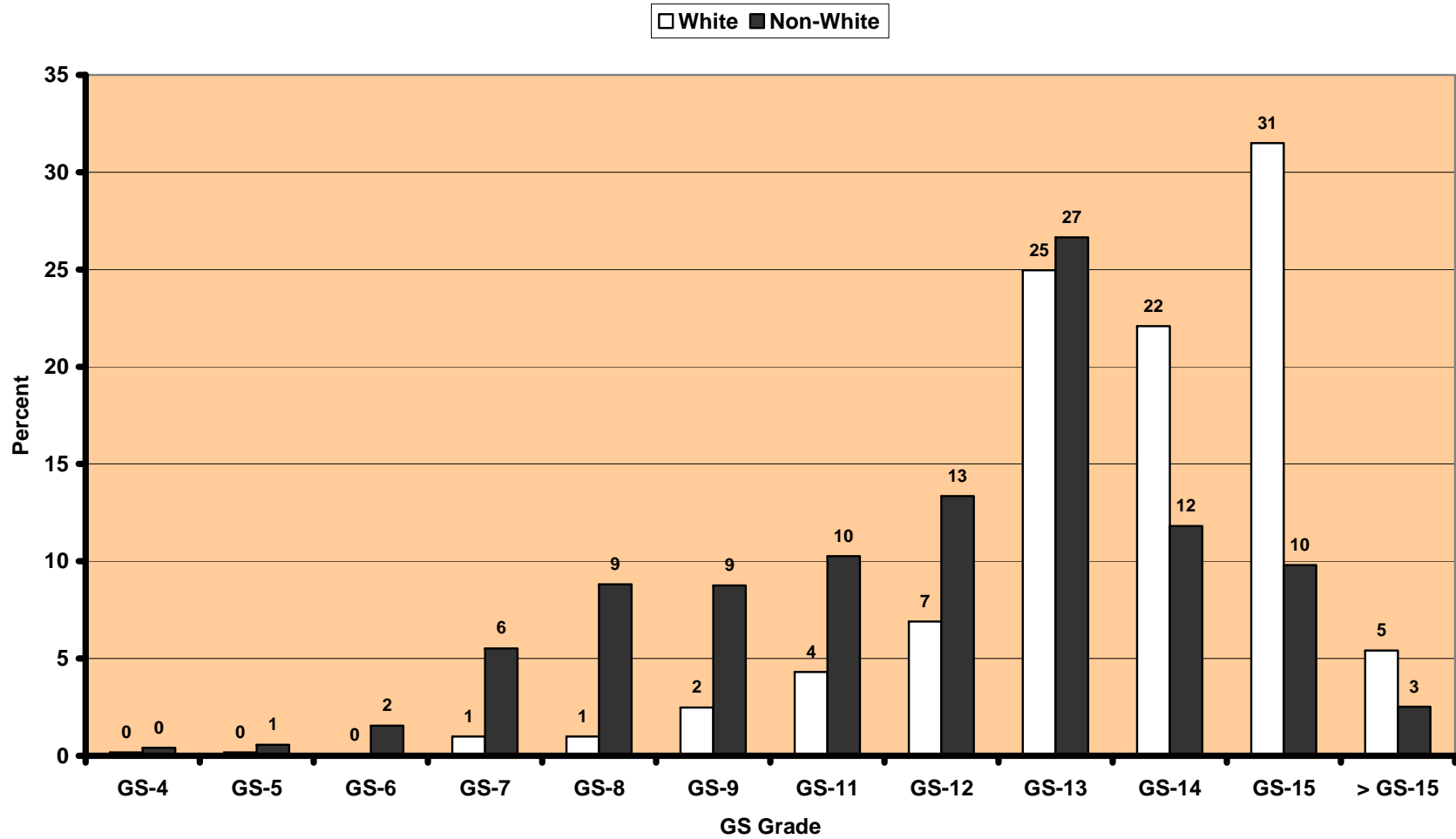


5-Year Average Performance Ratings

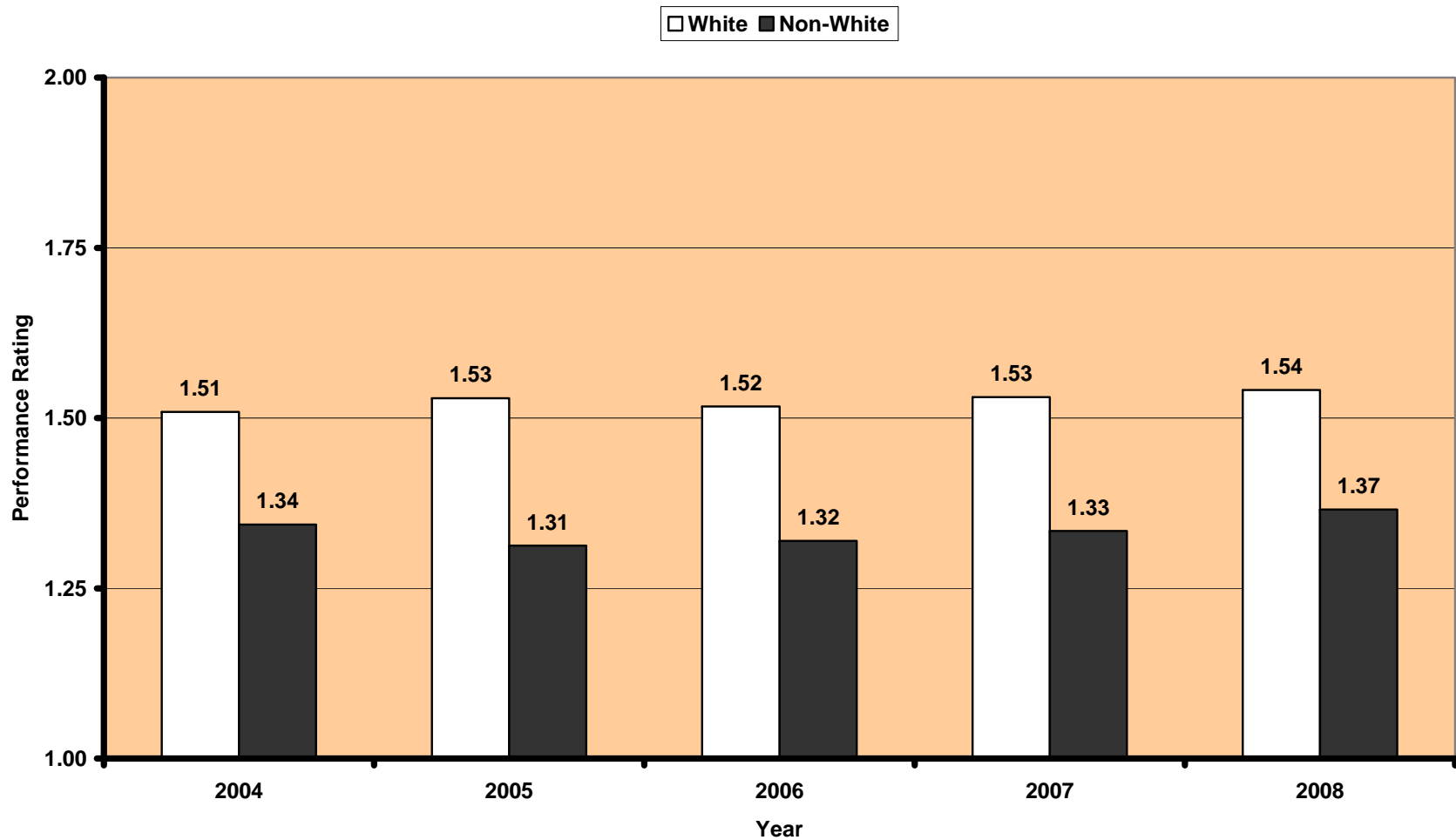


Racial or Ethnic Discrimination

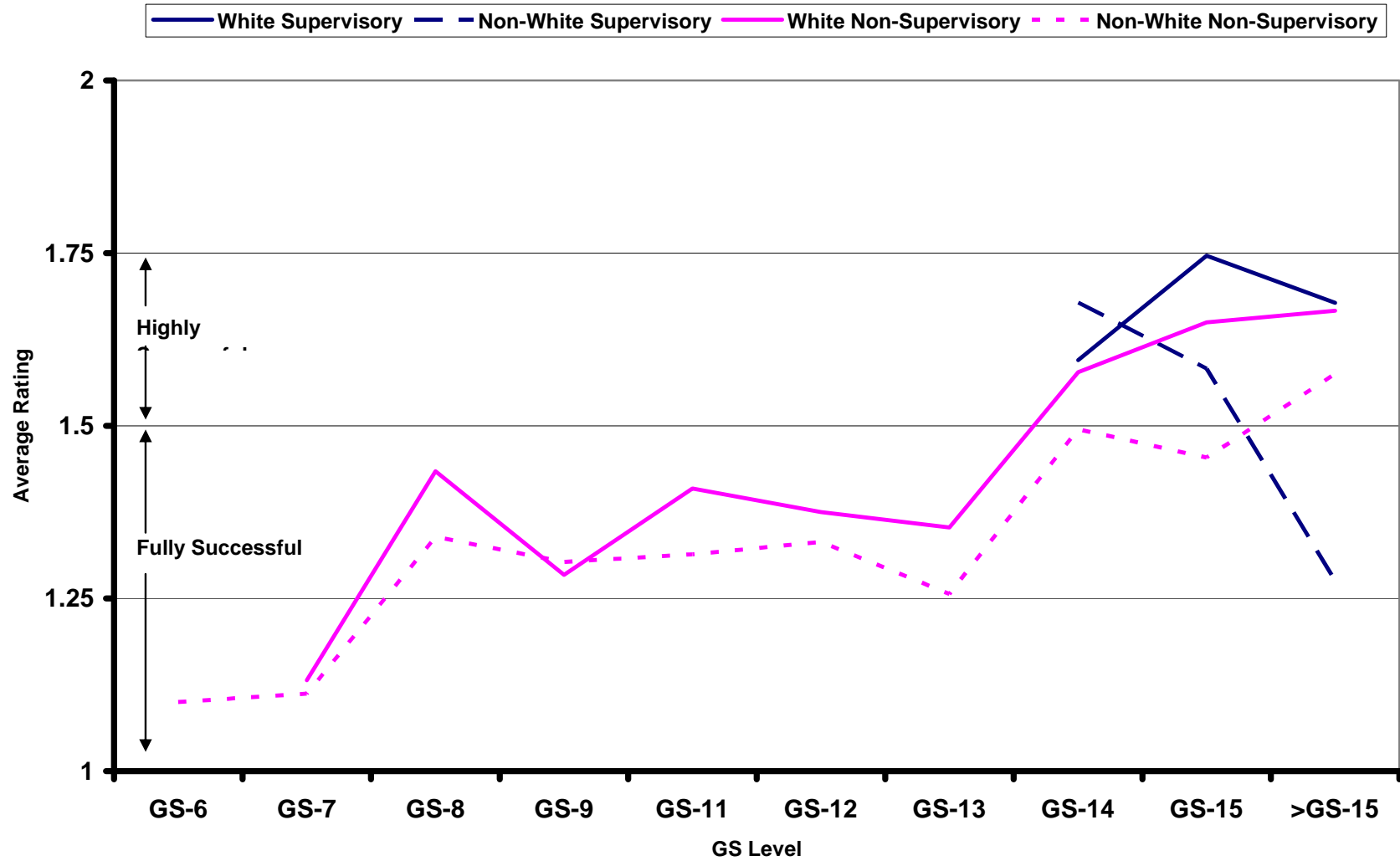
5-Year Average Percent Distribution of All FERC White and Non-White Employees by Grade Level



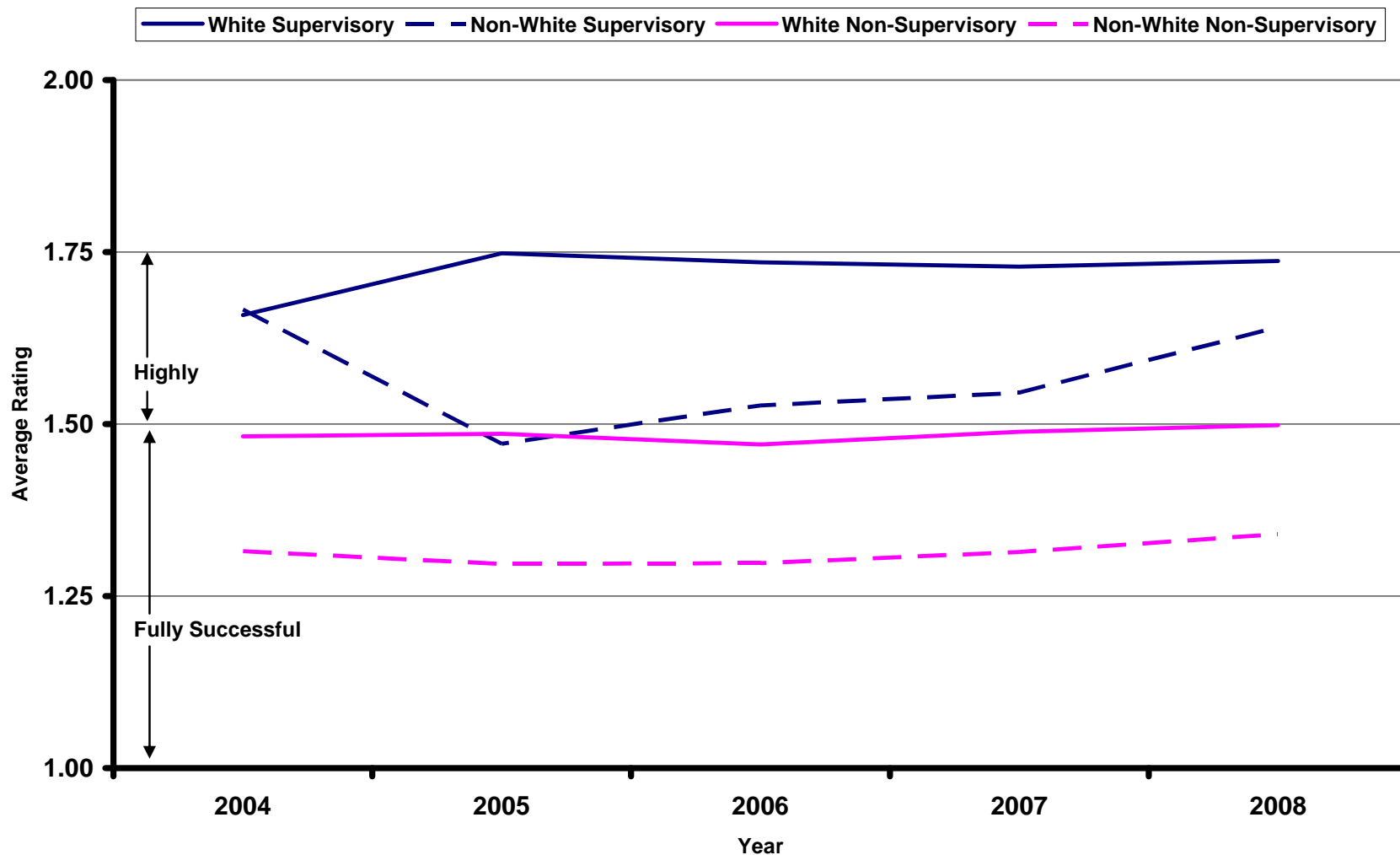
Average Performance Ratings for All FERC Employees by Race, 2004-2008



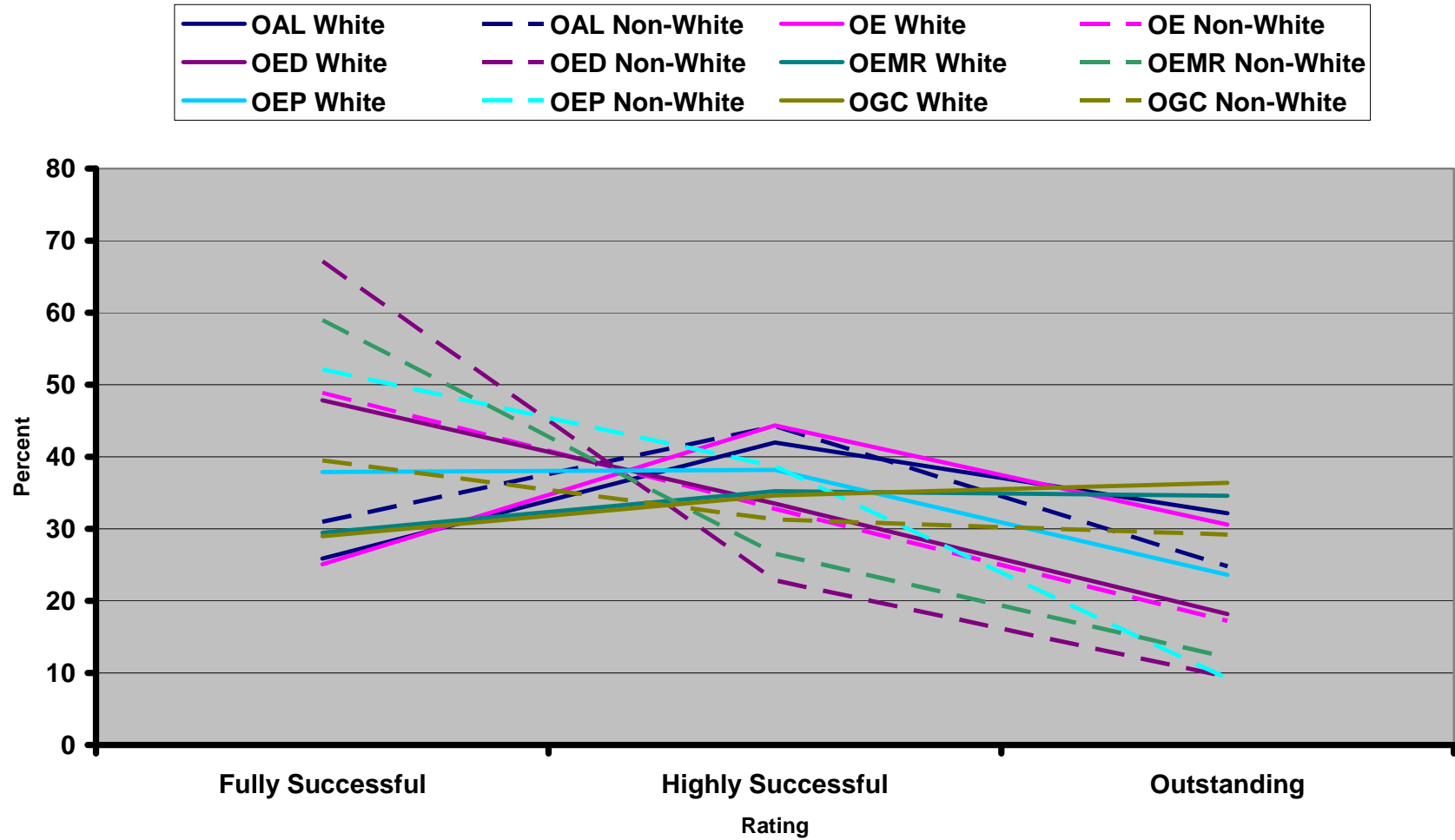
5-Year Average Performance Rating by Race and GS Level



Average Annual Performance Ratings by Race and Staff Level



5-Year Average Distribution of Performance Ratings of Non-Supervisory Staff by Office and Race



Average Performance Ratings by Major Ethnic Groups

	2004	2005	2006	2007	2008	5-Year Average
Supervisory						
White	1.66	1.75	1.74	1.73	1.74	1.72
Asian	1.64	1.50	1.75	1.60	1.50	1.60
Black or African American	1.69	1.50	1.52	1.55	1.70	1.59
Hispanic or Latino	1.60	1.40	1.33	1.50	1.60	1.48
Not Elsewhere Classified (NEC)		1.00	1.50	1.50	1.50	1.43
Non-Supervisory						
White	1.48	1.49	1.47	1.49	1.50	1.49
American Indian or Alaska Native	1.30	1.07	1.20	1.25	1.29	1.22
Asian	1.31	1.30	1.33	1.42	1.38	1.34
Black or African American	1.32	1.30	1.29	1.28	1.33	1.30
Hispanic or Latino	1.23	1.33	1.36	1.34	1.37	1.32
NEC			1.33	1.44	1.40	1.40
All Supervisory Average	1.66	1.69	1.69	1.69	1.72	1.69
All Non-Supervisory Average	1.42	1.42	1.41	1.43	1.44	1.42

Age Discrimination

Ratings by Age Group

Age Group-Rating pairs with less than five records are omitted.

Supervisory								
Age Group	Rating	5-Year Average Number	2004	2005	2006	2007	2008	5-Year Average
		#				%		
35-39	O	7	75	63	63	67	60	64
		11	100	100	100	100	100	100
40-44	HS	5	29	33	36	30	44	35
	O	7	53	60	45	50	50	52
		14	100	100	100	100	100	100
45-49	FS	5	25	28	13	13	9	17
	HS	10	25	24	39	40	30	32
	O	15	50	48	48	47	61	51
		30	100	100	100	100	100	100
50-54	FS	5	18	10	9	7	11	11
	HS	16	30	34	33	34	39	34
	O	26	52	56	58	59	50	55
		46	100	100	100	100	100	100
55-59	FS	7	16	16	20	27	13	18
	HS	13	32	37	34	35	32	34
	O	17	51	47	43	38	55	47
		37	100	100	100	100	100	100
60-64	HS	7	46	33	17	32	50	36
	O	9	31	53	56	59	46	50
		18	100	100	100	100	100	100
No. of Records		163	153	160	171	164	167	815

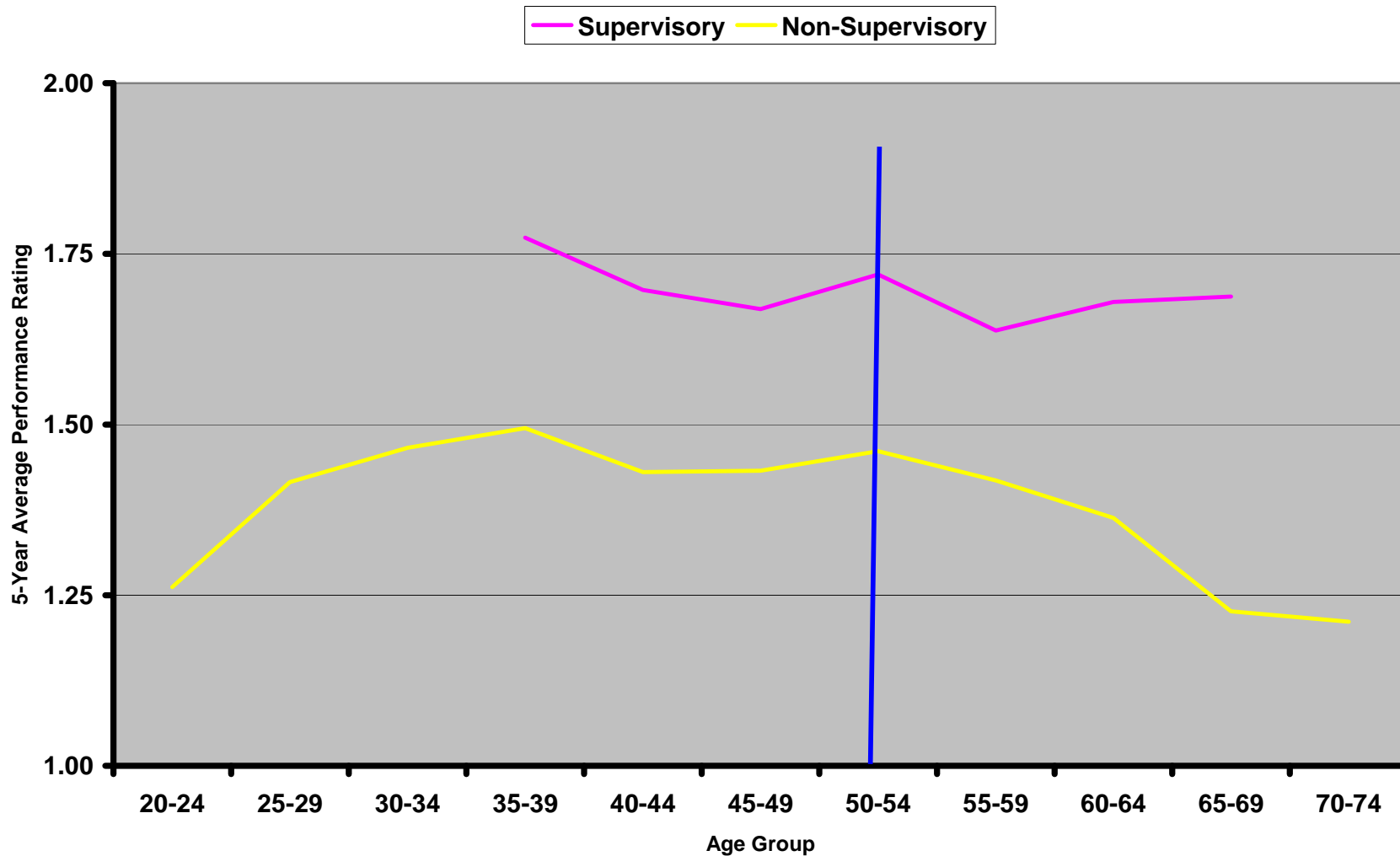
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Non-Supervisory									
Age Group	Rating	5-Year Average Number	2004	2005	2006	2007	2008	5-Year Average	
		#	%						
20-24	HS	19	64	63	58	38	36	58	
	O	11	30	33	19	52	36	32	
		34	100	100	100	100	100	100	
25-29	FS	47	51	42	39	40	33	40	
	HS	42	29	37	39	33	42	36	
	O	27	20	21	22	27	25	23	
		116	100	100	100	100	100	100	
30-34	FS	23	39	31	33	29	29	32	
	HS	29	35	38	44	39	44	40	
	O	20	26	31	21	31	26	27	
		73	100	100	100	100	100	100	
35-39	FS	27	27	28	34	32	30	30	
	HS	36	44	43	37	37	36	40	
	O	27	27	28	29	32	34	30	
		91	100	100	100	100	100	100	
40-44	FS	41	39	39	39	35	33	37	
	HS	42	32	34	39	39	43	37	
	O	28	27	25	21	26	24	25	
		112	100	100	100	100	100	100	
45-49	FS	50	31	35	39	46	43	39	
	HS	44	38	33	37	32	33	35	
	O	34	31	31	23	22	23	26	
		128	100	100	100	100	100	100	
50-54	FS	64	39	37	38	34	32	37	
	HS	61	29	32	37	38	40	35	
	O	51	32	31	25	28	28	29	

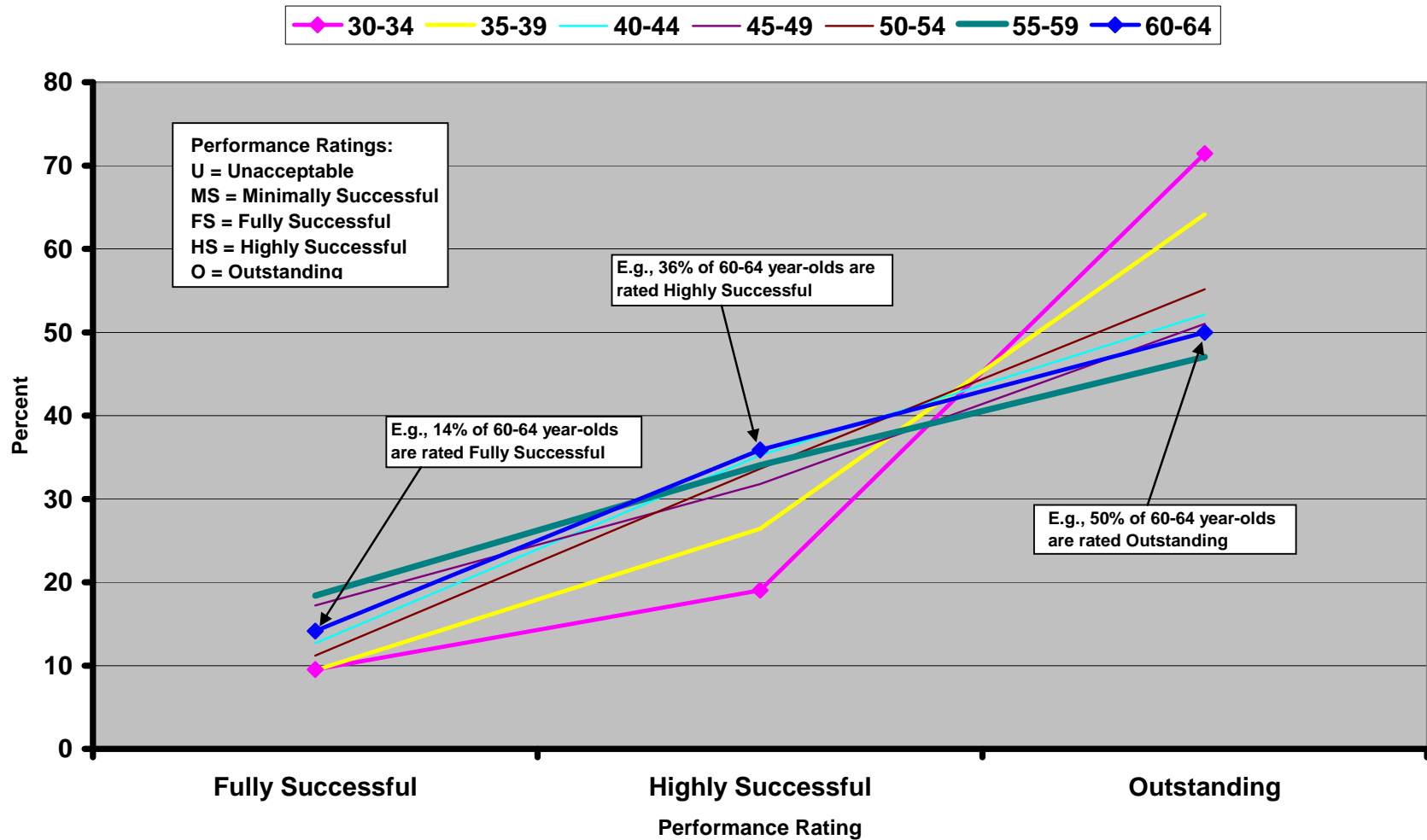
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		176	100	100	100	100	100	100
55-59	FS	61	34	42	43	44	38	40
	HS	49	33	31	33	32	32	32
	O	40	30	24	23	24	29	26
		152	100	100	100	100	100	100
60-64	FS	34	44	59	44	43	49	47
	HS	23	40	25	35	36	26	32
	O	14	16	15	21	21	25	20
		72	100	100	100	100	100	100
65-69	HS	14	60	55	62	64	59	60
	O	8	35	36	33	32	38	35
		23	100	100	100	100	100	100
70-74	HS	5	50	71	50	67	56	58
	O	4	50	29	50	33	44	42
		9	100	100	100	100	100	100
No. of Records		990	1054	985	977	972	964	4952

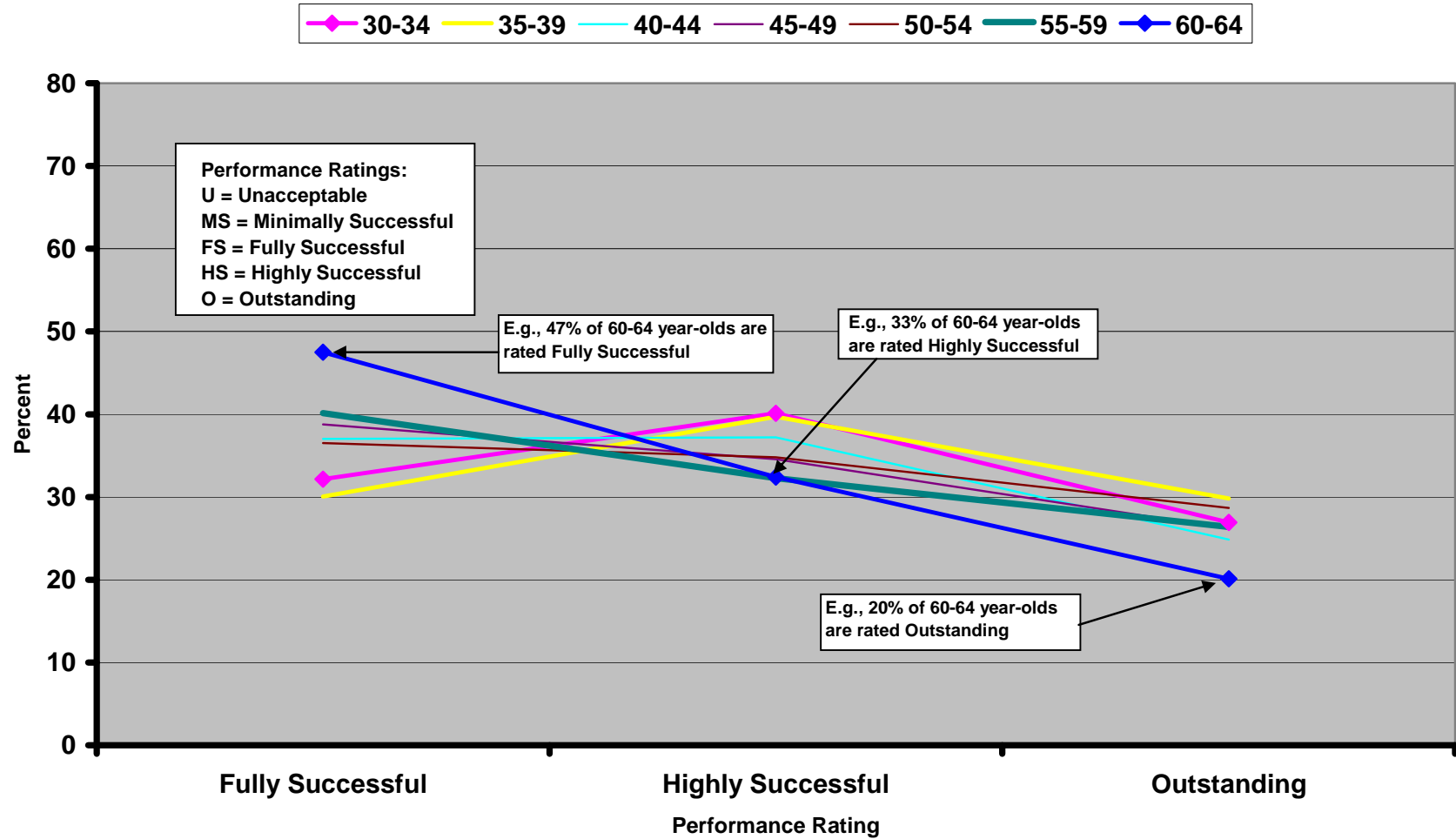
5-Year Average Performance Ratings by Age Group



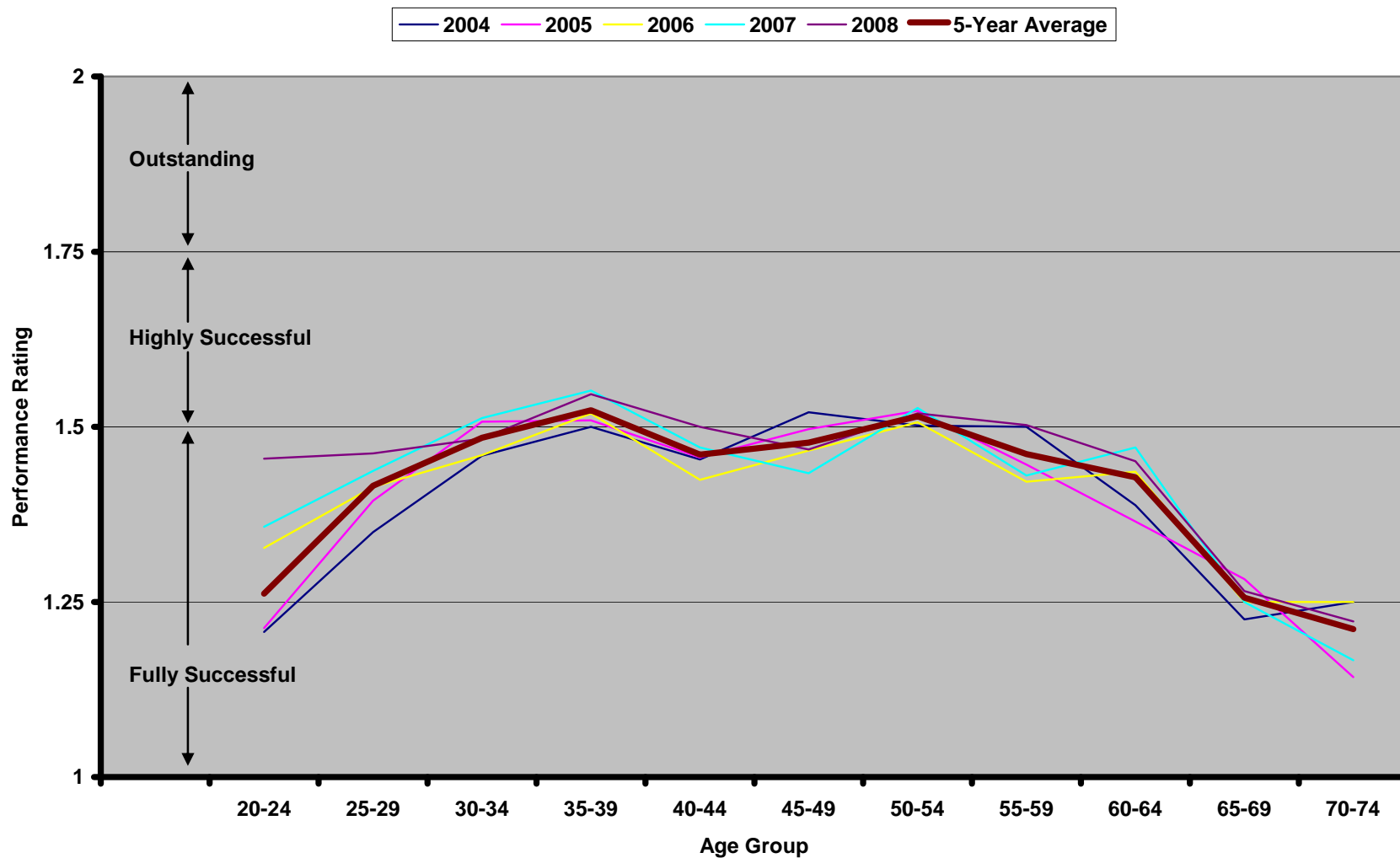
5-Year Average Distribution of Performance Ratings, All Supervisory Employees by Age Group



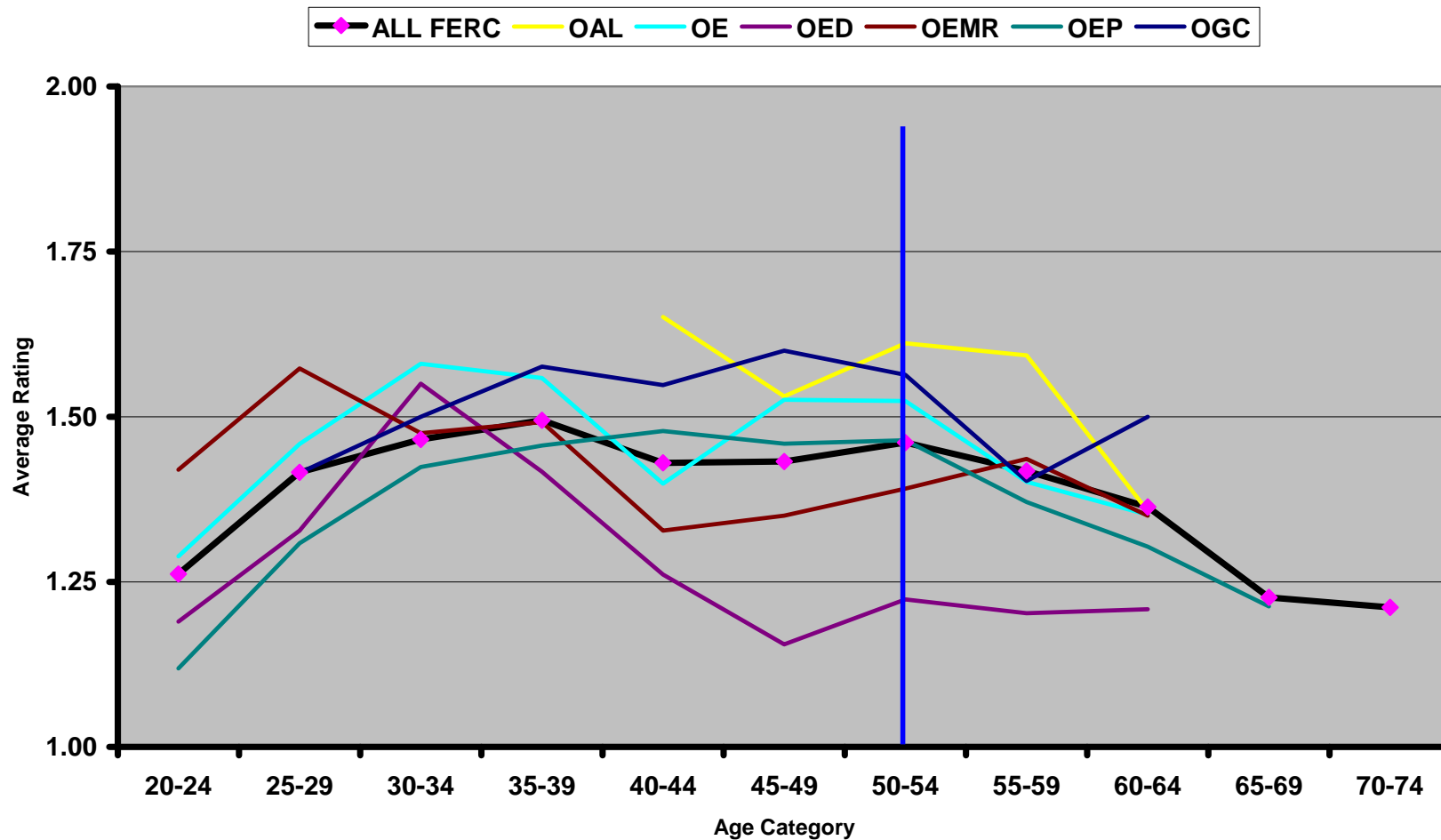
5-Year Average Distribution of Performance Ratings, All Non-Supervisory Employees by Age Group



Average Performance Rating, All FERC Employees by Age Group

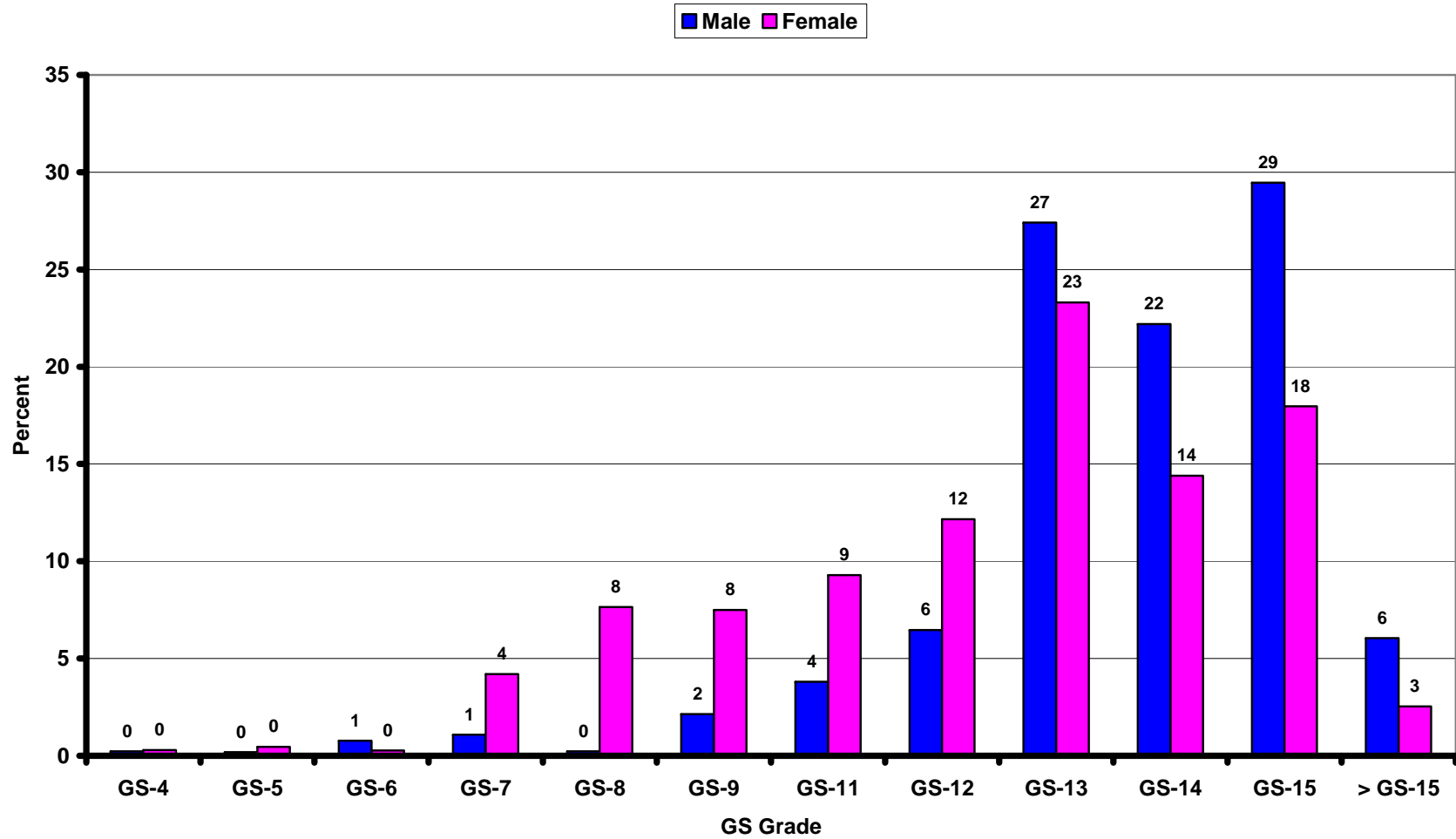


5-Year Average Performance Ratings by Office and Age Group, Non-Supervisory Employees

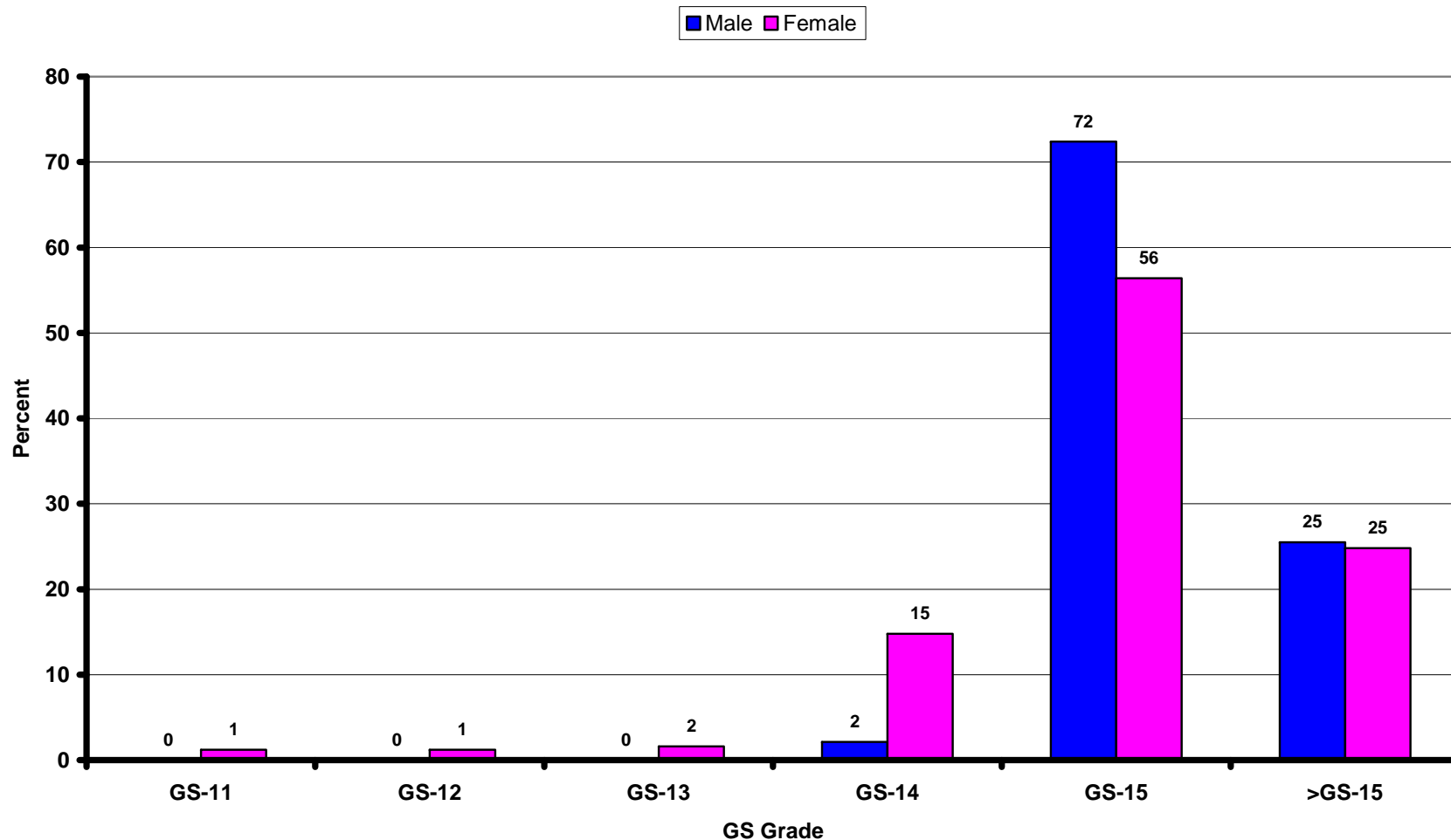


Gender Discrimination

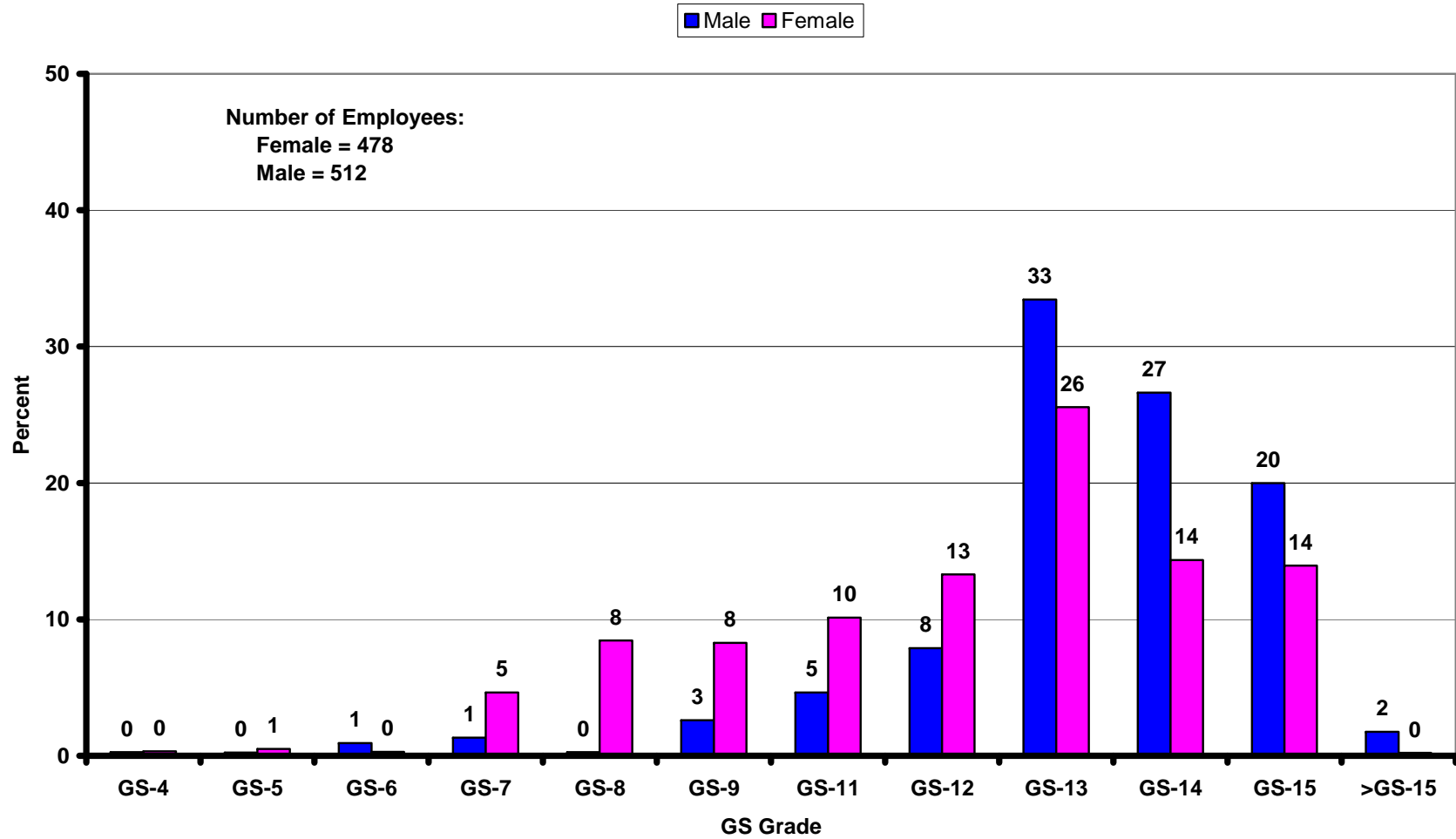
5-Year Average Percent Distribution of All FERC Male and Female Employees by Grade Level



Percent Distribution of Male and Female Supervisory Staff by Grade Level

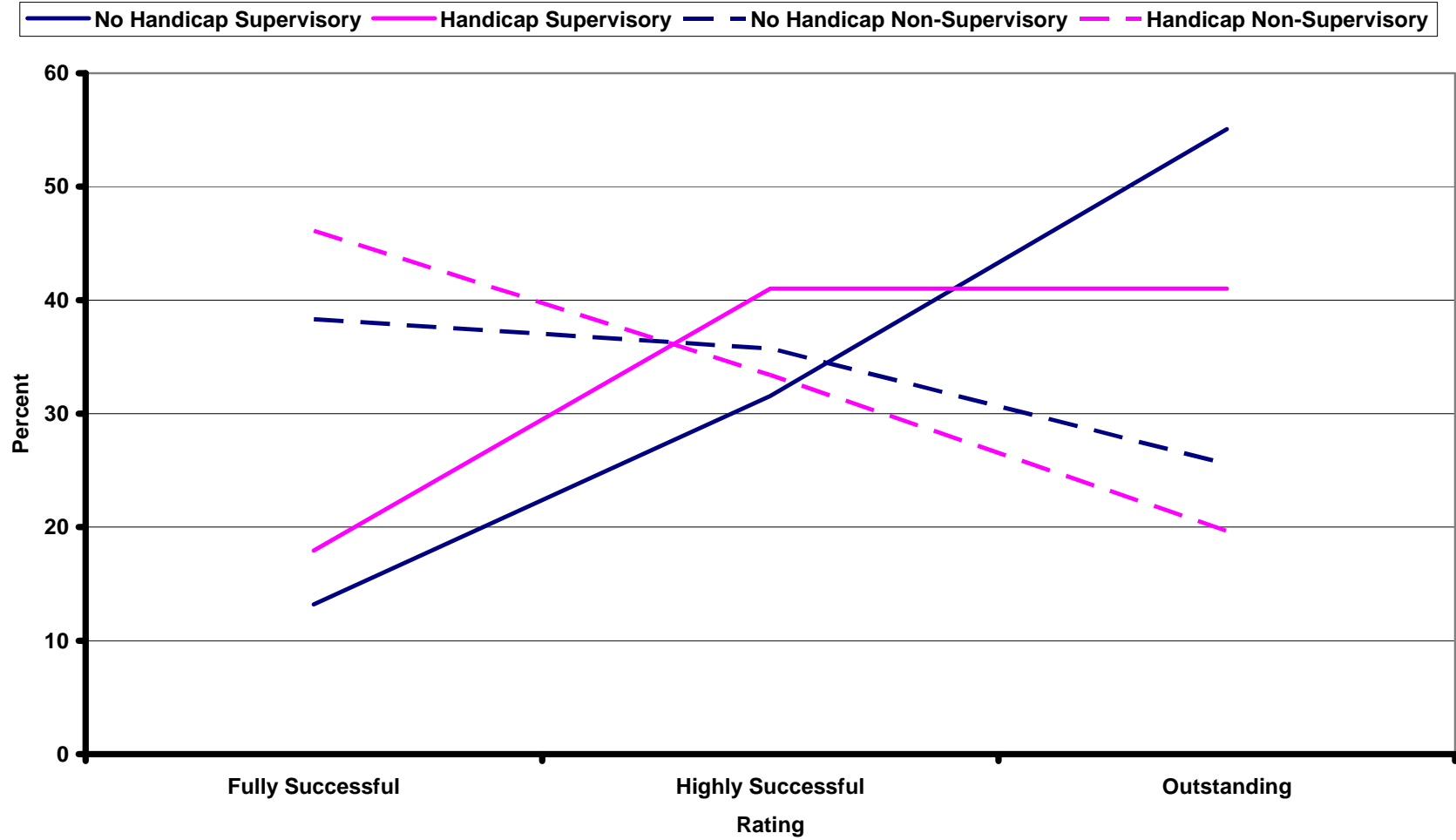


Percent Distribution of Male and Female Non-Supervisory Staff by Grade Level: All FERC



Handicap/Disability Discrimination

Distribution of Ratings for Handicapped and Non-Handicapped Employees



Occupational Bias

Average Performance Ratings by Job Category

Job categories omitted had fewer than 5 people.

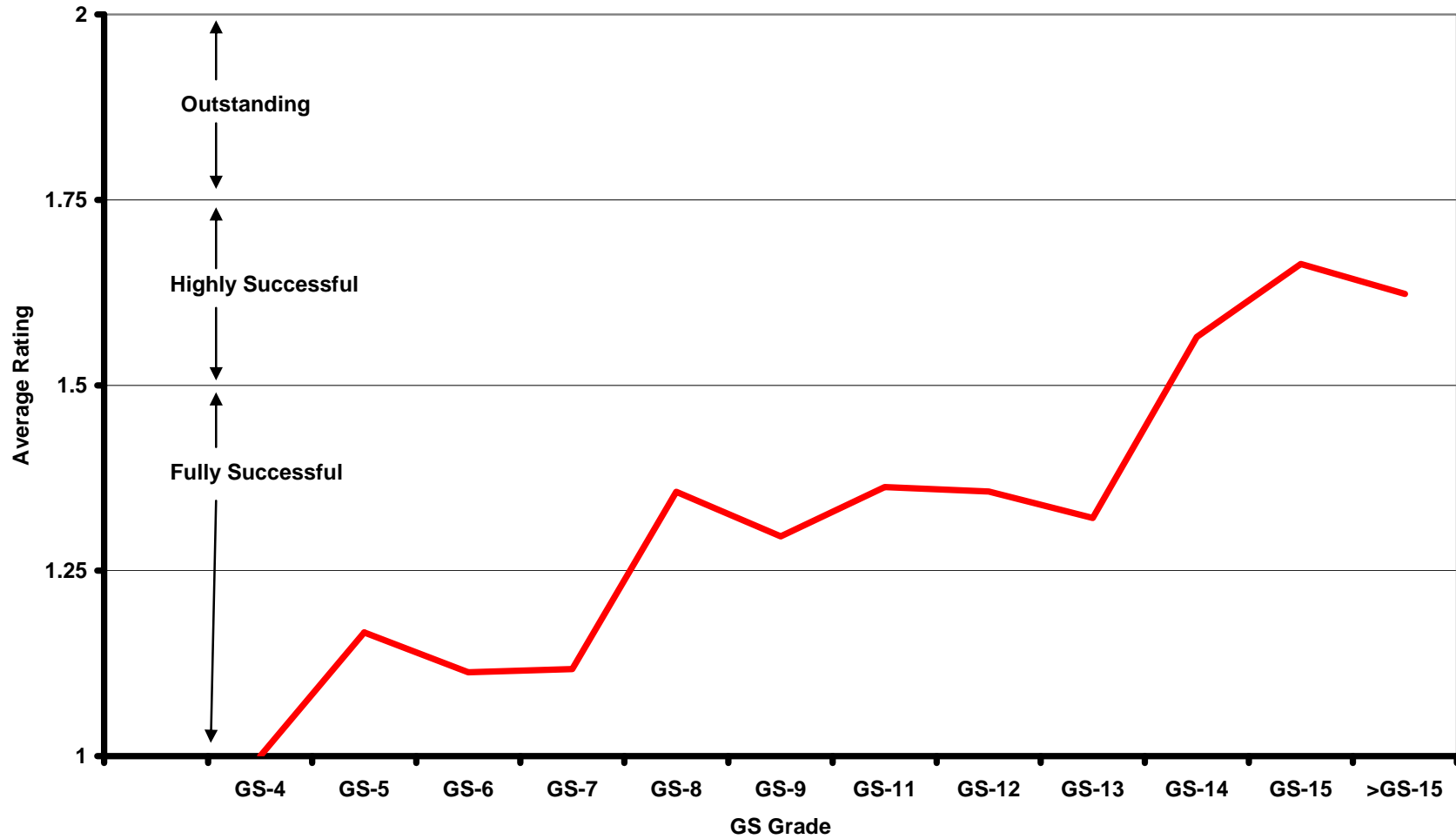
Job Category	Average Number	2004	2005	2006	2007	2008	5-Year Average
Average Performance Rating							
All FERC Average	990	1.42	1.42	1.41	1.43	1.44	1.42
5-Year Average Rating = Highly Successful (1.50-1.74)							
Administrative Officer	7	1.56	1.75	1.57	1.83	1.79	1.69
Legal Specialist	9	1.67	1.69	1.61	1.61	1.69	1.65
Program Analyst	12	1.63	1.59	1.58	1.68	1.77	1.65
Paralegal Specialist	11	1.59	1.61	1.75	1.64	1.50	1.61
Trial Attorney	41	1.65	1.59	1.57	1.60	1.61	1.60
Environmental Protection Specialist	14	1.59	1.57	1.58	1.60	1.58	1.58
Fishery Biologist	17	1.60	1.58	1.57	1.57	1.57	1.58
Economist	47	1.49	1.54	1.55	1.54	1.57	1.54
Agenda/Document Analyst	5	1.83	1.83	1.30	1.30	1.20	1.52
5-Year Average Rating = Fully Successful (1.00-1.49)							
Attorney-Adviser	125	1.45	1.49	1.46	1.52	1.49	1.48
Energy Industry Analyst	178	1.48	1.43	1.45	1.45	1.47	1.46
Geologist	7	1.50	1.50	1.50	1.36	1.42	1.46
Financial Analyst	6	1.33	1.43	1.50	1.50	1.50	1.44
Ecologist	8	1.44	1.44	1.50	1.36	1.36	1.42
Regulatory Gas Utility Specialist	6	1.21	1.42	1.50	1.50	1.50	1.42
Mechanical Engineer	7	1.33	1.40	1.36	1.44	1.50	1.41
Petroleum Engineer	7	1.33	1.39	1.36	1.50	1.40	1.39
Environmental Engineer	6	1.42	1.50	1.43	1.25	1.33	1.39
Auditor	25	1.47	1.34	1.31	1.46	1.34	1.39
Electrical Engineer	23	1.31	1.34	1.44	1.40	1.40	1.38
Management Analyst	39	1.42	1.32	1.38	1.38	1.38	1.38
Chemical Engineer	7	1.50	1.40	1.43	1.28	1.28	1.36
Civil Engineer	103	1.33	1.38	1.34	1.36	1.36	1.35
Secretary	26	1.35	1.41	1.38	1.28	1.32	1.35

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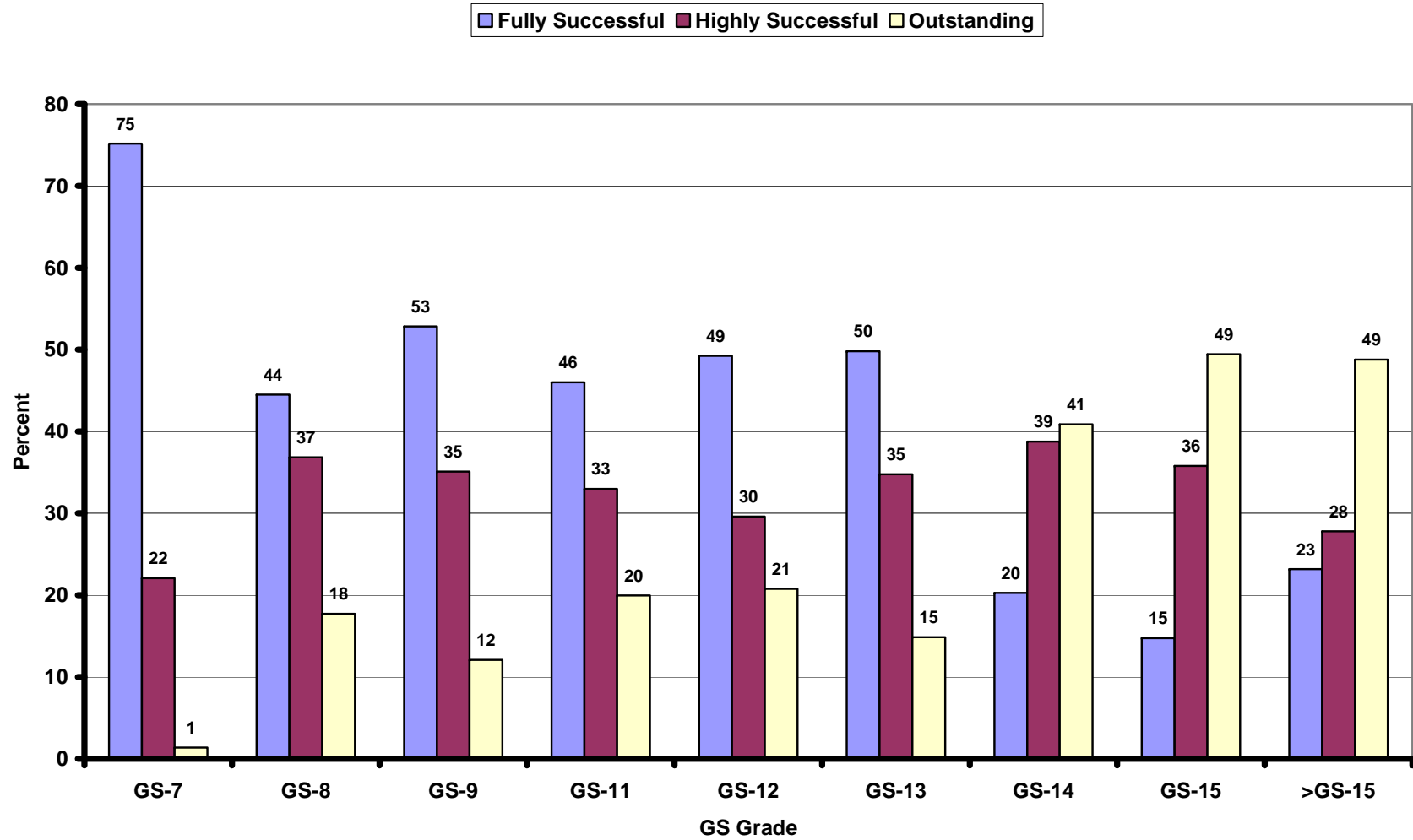
Legal Assistant	6	1.50	1.50	1.17	1.25	1.29	1.34
Environmental Biologist	17	1.36	1.30	1.28	1.34	1.43	1.34
Outdoor Recreation Planner	5	1.38	1.38	1.33	1.40	1.20	1.33
Litigation Support Assistant	5	1.50	1.40	1.20	1.20	1.30	1.33
Project Specialist	7	1.29	1.43	1.21	1.25	1.38	1.31
Archeologist	6	1.25	1.50	1.42	1.25	1.17	1.31
Accountant	6	1.25	1.00	1.38	1.21	1.44	1.28
Legal Technician	11	1.14	1.21	1.41	1.25	1.21	1.24
IT Specialist	12	1.19	1.25	1.23	1.30	1.14	1.23
Public Utilities Specialist	6	1.13	1.00	1.17	1.30	1.30	1.17
Management Information Specialist	5	1.25	1.13	1.13	1.10	1.17	1.15
Staff Accountant	9	1.18	1.15	1.19	1.07	1.08	1.14
Human Resources Specialist	13	1.19	1.08	1.03	1.08	1.35	1.14

Grade Level Bias

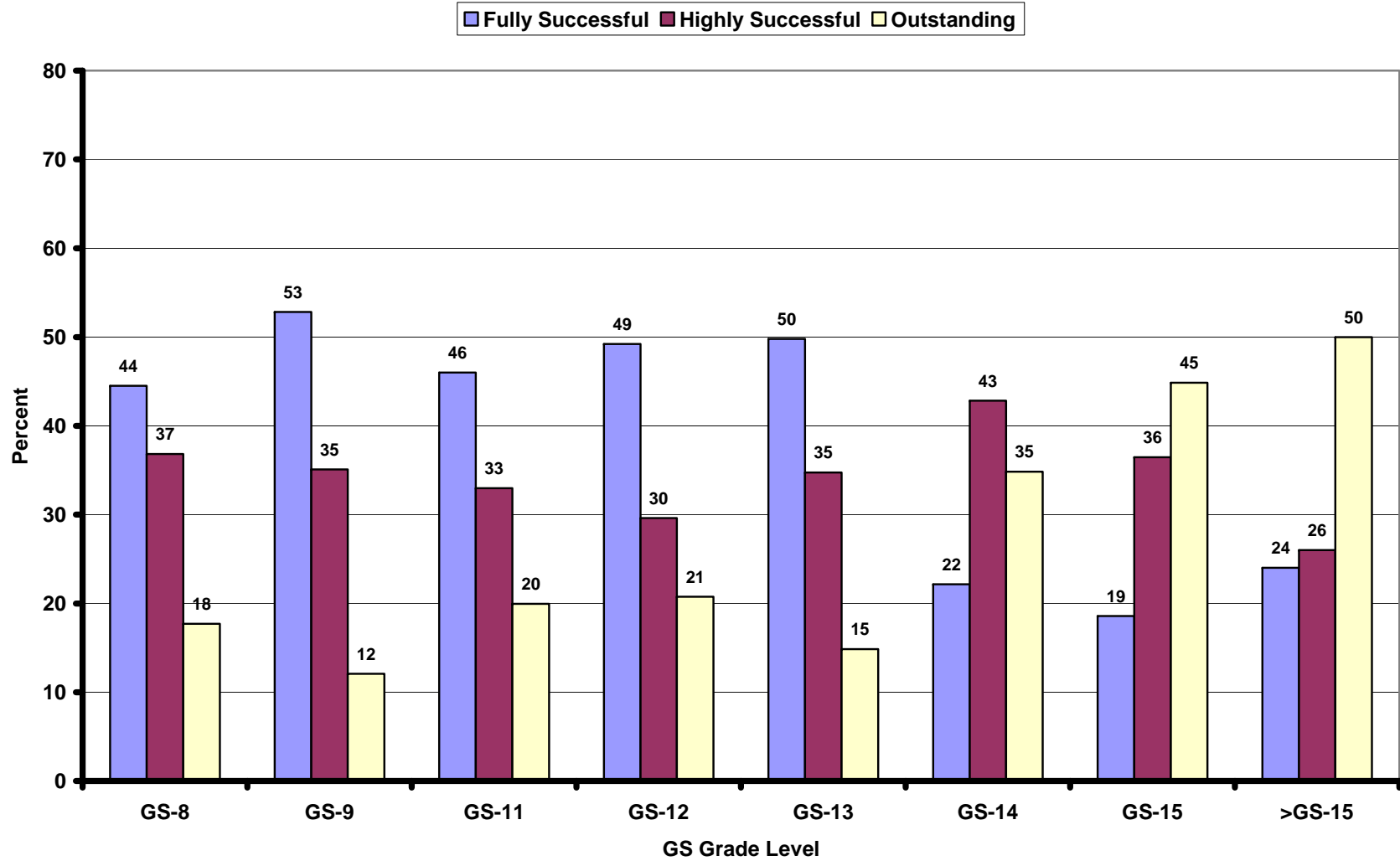
5-Year Average Performance Rating by GS Grade Level - All FERC Employees



Percent Distribution of Performance Ratings by GS Grade Level - All Employees

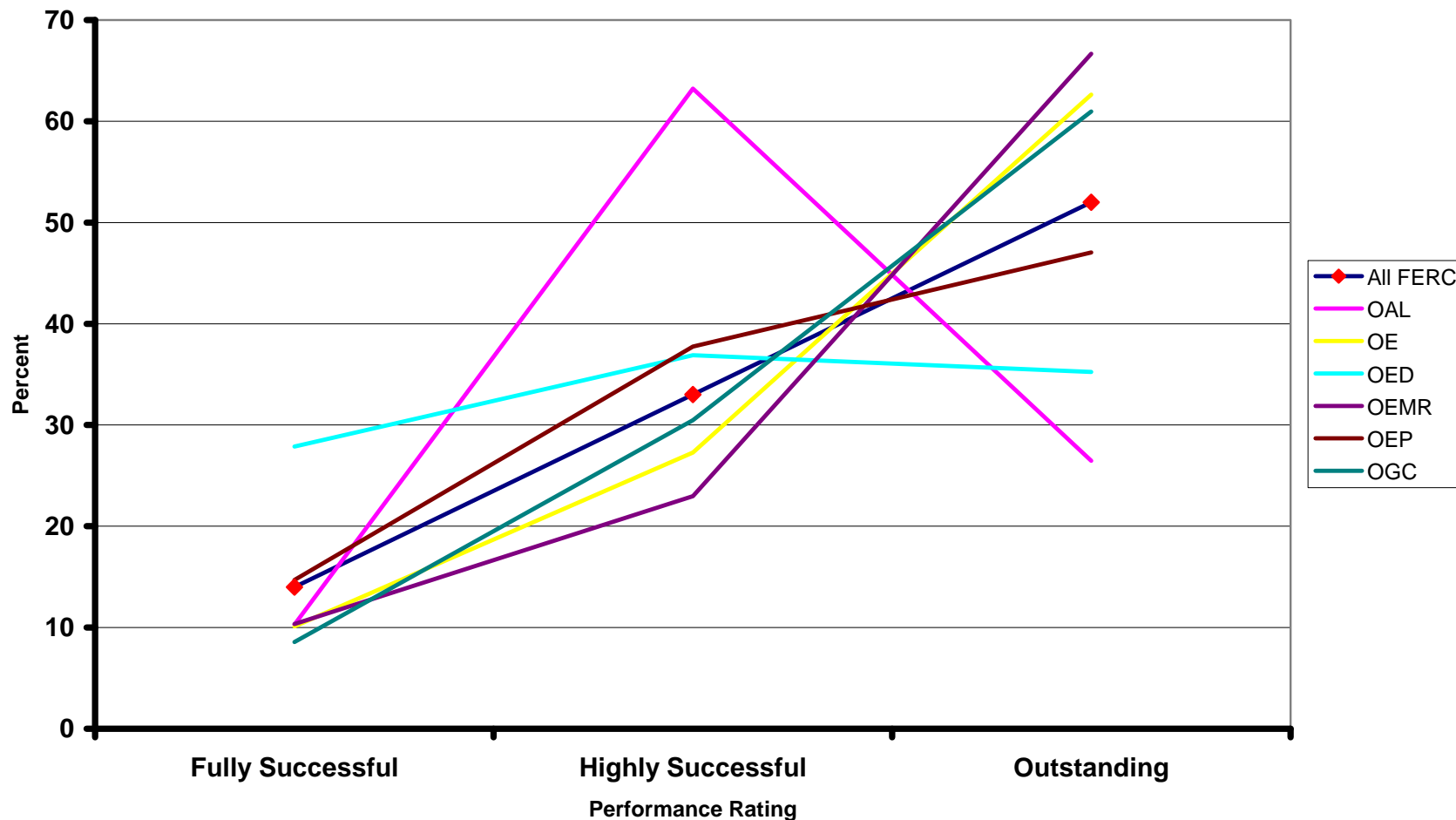


Percent Distribution of Performance Ratings by Grade Level - Non-Supervisory Employees

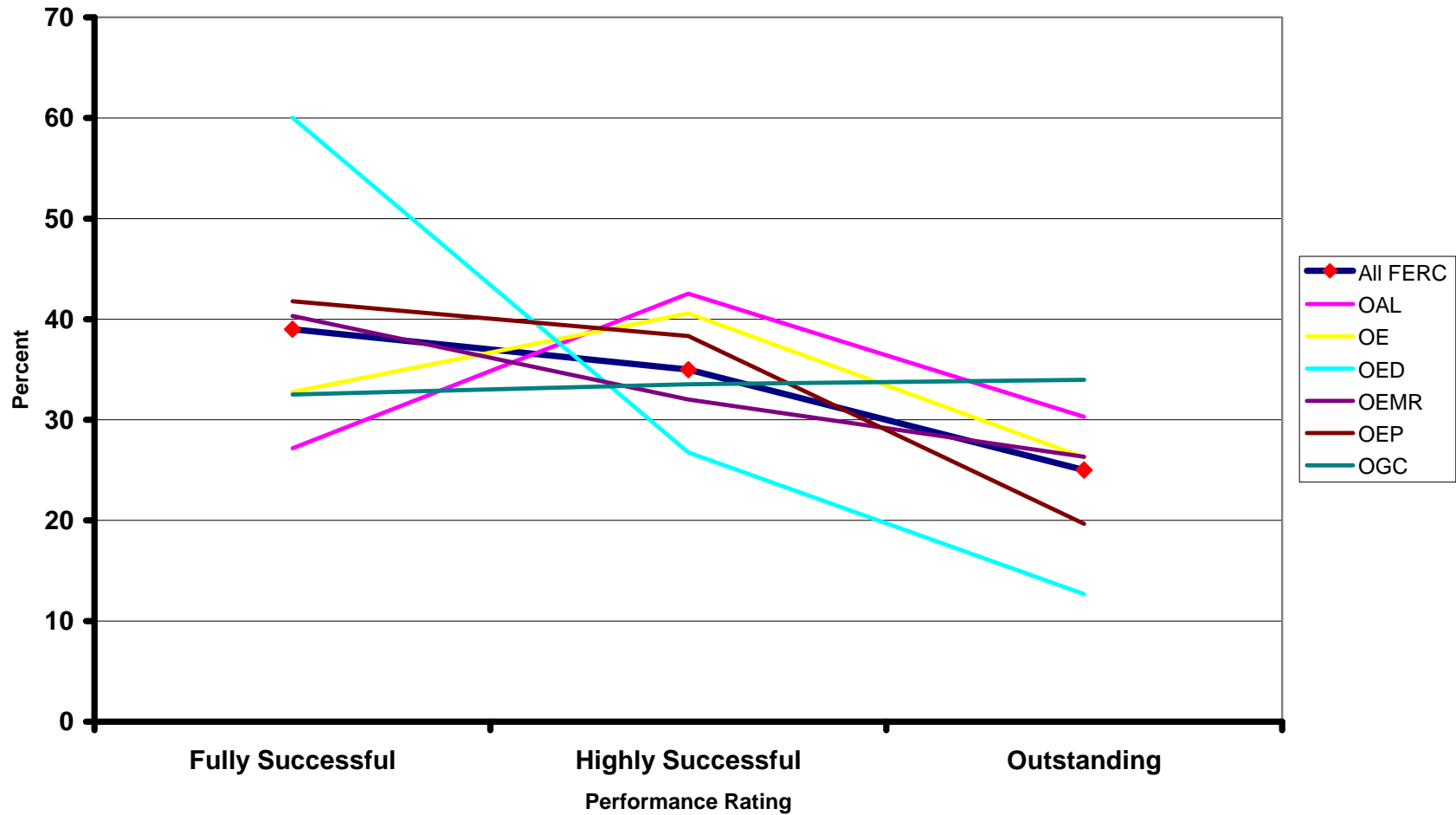


Inter-Office Disparities

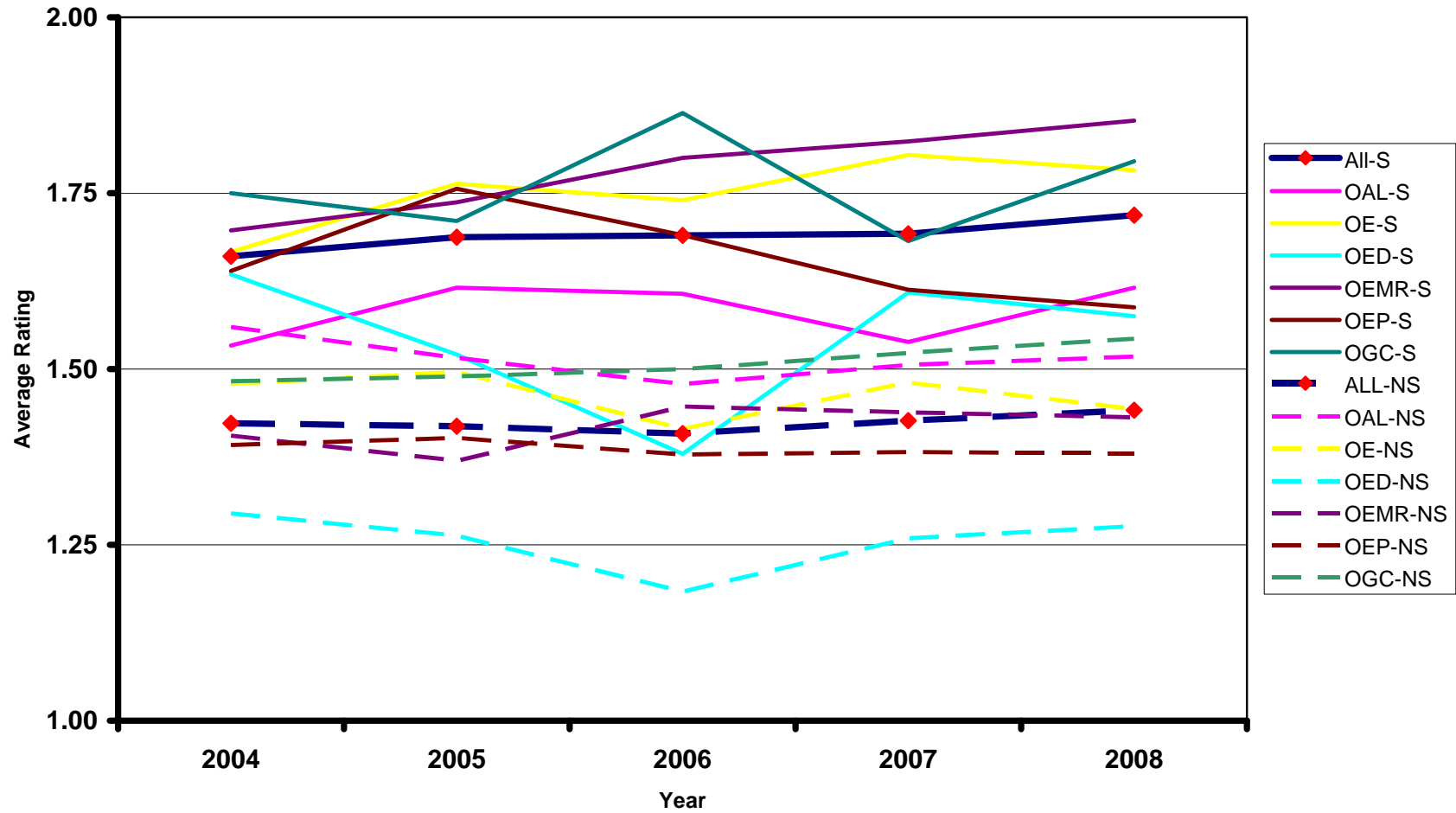
5-Year Average Distribution of Performance Ratings by Office, Supervisory Staff



5-Year Average Distribution of Performance Ratings by Office, Non-Supervisory Staff



Average Performance Ratings, Supervisory and Non-Supervisory by Office, 2004-2008



Supervisory v Non-Supervisory Performance Ratings by Office

Offices omitted are OALJ, OEA, OEPI, OER

Office	S-NS	2004	2005	2006	2007	2008	5-Year Average
All FERC	S	1.66	1.69	1.69	1.69	1.72	1.69
	NS	1.42	1.42	1.41	1.43	1.44	1.42
OAL	S	1.53	1.62	1.61	1.54	1.62	1.58
	NS	1.56	1.52	1.48	1.51	1.52	1.52
OE	S	1.67	1.76	1.74	1.80	1.78	1.76
	NS	1.48	1.50	1.42	1.48	1.44	1.46
OED	S	1.63	1.52	1.38	1.61	1.58	1.54
	NS	1.29	1.26	1.18	1.26	1.28	1.26
OEMR	S	1.70	1.74	1.80	1.82	1.85	1.78
	NS	1.41	1.37	1.45	1.44	1.43	1.42
OEP	S	1.64	1.76	1.69	1.61	1.59	1.66
	NS	1.39	1.40	1.38	1.38	1.38	1.39
OGC	S	1.75	1.71	1.86	1.68	1.80	1.76
	NS	1.48	1.49	1.50	1.52	1.54	1.51

5-Year Average Distribution of Performance Ratings: Supervisory v. Non-Supervisory Staff by Office

Percentages may not add to 100 due to omission of less than Fully Successful categories. Offices omitted are OALJ, OEA, OEPI, OER

Office	Supervisory v. Non-Supervisory Staff	Fully Successful	Highly Successful	Outstanding
		Percent (%)		
OAL	Supervisory Staff	10	63	26
	Non-Supervisory Staff	27	43	30
OE	Supervisory Staff	10	27	63
	Non-Supervisory Staff	33	41	26
OED	Supervisory Staff	28	37	35
	Non-Supervisory Staff	60	27	13
OEMR	Supervisory Staff	10	23	67
	Non-Supervisory Staff	40	32	26
OEP	Supervisory Staff	15	38	47
	Non-Supervisory Staff	42	38	20
OGC	Supervisory Staff	9	30	61
	Non-Supervisory Staff	33	34	34

Intra-Office Disparities

Average Performance Rating By Office and Division, Non-Supervisory Employees

**Highlighted ratings identify divisions with 5-Year average rating of Highly Successful
Divisions with an average of less than 5 employees are omitted from table**

Office	Division	5-Year Average No.	2004	2005	2006	2007	2008	5-Year Average
OAL	Legal Group I	10	1.70	1.64	1.70	1.65	1.67	1.67
OAL	Legal Group III	10	1.63	1.45	1.50	1.55	1.55	1.53
OAL	Legal Group II	10	1.56	1.50	1.50	1.55	1.50	1.52
OAL	Technical Group I	9	1.50	1.55	1.50	1.50	1.50	1.51
OAL	Technical Group II	7	1.50	1.44	1.50	1.60	1.50	1.50
OAL	Admin. & Litigation Support Division	12	1.58	1.63	1.46	1.38	1.42	1.49
OAL	Technical Group III	7	1.69	1.50	1.44	1.43	1.33	1.49
OAL	Competition Analysis Group	5	1.43	1.50	1.30	1.33	1.50	1.42
OAL	Technical Group IV	9	1.50	1.30	1.40	1.44	1.43	1.41
OALJ	Office of Administrative Law Judges	19	1.30	1.47	1.54	1.53	1.45	1.45
OE	Investigations Branch 3	6			1.83	1.80	1.83	1.82
OE	Div of Management & Communication	10	1.59	1.72				1.65
OE	Information Mgmt & Reporting Branch	7			1.64	1.64	1.50	1.60
OE	Division of Enforcement	27	1.58	1.55				1.56
OE	Market Monitor Relations Branch	6			1.58	1.58	1.50	1.56
OE	Div of Integrated Market Assessment	6	1.50	1.63				1.54
OE	Operational Audits Branch	15		1.53				1.53
OE	Investigations Branch 2	7			1.50	1.56	1.50	1.53
OE	Division of Operational Audits	20	1.50					1.50
OE	Market Oversight & Assessment	7	1.36	1.67				1.50
OE	Operational Audits Branch 2	7			1.50			1.50
OE	Energy Market Analysis Branch	11			1.45	1.50		1.48
OE	Audits Branch 3	6				1.50	1.42	1.46
OE	Div of Information Development	9	1.44	1.44				1.44

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OE	Div of Energy Market Oversight	17	1.39	1.50				1.44
OE	Audits Branch 2	8				1.50	1.33	1.44
OE	Administration Staff	6			1.50	1.42	1.30	1.42
OE	Fuels Market Analysis Branch	6					1.42	1.42
OE	Regulatory Accounting Branch	7		1.40	1.25	1.42	1.58	1.41
OE	Investigations Branch 1	6			1.43	1.33	1.38	1.38
OE	Forms Administration & Data Brach	9			1.19	1.44	1.44	1.37
OE	Investigations Branch 5	5					1.30	1.30
OE	Investigations Branch 4	5			1.30	1.33	1.20	1.28
OE	Division of Financial Audits	15	1.27					1.27
OE	Audits Branch 1	6				1.25	1.25	1.25
OE	Financial Audits Branch	14		1.20	1.27			1.23
<hr/>								
OED	Secretary of the Commission	16	1.60	1.57	1.54	1.46	1.33	1.52
OED	Systems Engineering Division	5	1.33	1.38	1.38	1.50	1.36	1.39
OED	Financial Policy Division	5	1.29	1.21	1.33	1.33	1.25	1.28
OED	IT Operations Division	8	1.42	1.17	1.29		1.25	1.27
OED	Logistics Management Division	12	1.33	1.25	1.21	1.19	1.25	1.25
OED	Financial Service Division	10	1.25	1.25	1.13	1.28	1.28	1.24
OED	IT Operations & Information	8				1.19		1.19
OED	Security and Systems Assurance Division	10	1.09	1.05	1.00	1.13		1.06
OED	Recruitment & Development Branch	11	1.05					1.05
<hr/>								
OEMR	Regulatory Accounting Policy Group 4	9	1.67					1.67
OEMR	Economic Support Group	7		1.75	1.72	1.61	1.33	1.65
OEMR	Div of Tariffs & Mkt Dev - Central	7	1.64					1.64
OEMR	East Group 1	9	1.50	1.70	1.75	1.43	1.50	1.58
OEMR	West Group 6	8		1.44	1.44	1.56	1.69	1.53
OEMR	Economics Group	7	1.50					1.50
OEMR	Planning Group	7	1.50	1.38	1.50			1.45
OEMR	South Group 3	11	1.45					1.45
OEMR	East Group 3	9	1.29	1.44	1.56	1.50	1.50	1.44
OEMR	East Group 2	9	1.46	1.28	1.50	1.50	1.50	1.44
OEMR	West Group 1	10	1.29	1.30	1.50	1.55	1.61	1.44
OEMR	South Group 1	8	1.44					1.44
OEMR	Policy Group	7	1.43					1.43

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OEMR	South Group 4	13	1.42					1.42
OEMR	Central Group 1	10	1.40	1.36	1.44	1.50	1.39	1.42
OEMR	Central Group 3	8	1.27	1.33	1.50	1.43	1.50	1.39
OEMR	Administration Group	6	1.20	1.17	1.43	1.50	1.58	1.39
OEMR	Strategic Planning Group	5		1.17	1.33	1.44	1.43	1.38
OEMR	West Group 4	10	1.28	1.18	1.45	1.55	1.44	1.38
OEMR	South Group 2	12	1.38					1.38
OEMR	West Group 3	9	1.27	1.44	1.38	1.38	1.43	1.37
OEMR	Logistics and Security Group	6		1.13	1.50			1.36
OEMR	West Group 2	9	1.40	1.25	1.38	1.36	1.40	1.36
OEMR	Central Group 6	8			1.31	1.39	1.38	1.36
OEMR	West Group 5	7		1.38	1.42	1.38	1.25	1.36
OEMR	East Group 6	9		1.28	1.25	1.44	1.44	1.35
OEMR	Central Group 2	9	1.36	1.44	1.43	1.28	1.28	1.35
OEMR	Case Tracking and Forms Group	12		1.23	1.42			1.33
OEMR	East Group 5	8		1.33	1.19	1.25	1.58	1.32
OEMR	Central Group 5	9		1.21	1.33	1.31	1.43	1.31
OEMR	Data Support Group	16	1.28					1.28
OEMR	East Group 4	9		1.33	1.25	1.28	1.22	1.27
OEMR	Case Management Group	7				1.25	1.29	1.27
OEMR	Central Group 4	9	1.32	1.17	1.11	1.21	1.25	1.21
OEP	Infrastructure Policy Group	6	1.63	1.80	1.75	1.50	1.50	1.62
OEP	Hydro West Branch 1	12	1.54	1.58	1.65	1.55	1.50	1.56
OEP	Division of Dam Safety & Inspections	12	1.58	1.58	1.50	1.50	1.55	1.54
OEP	Biological Resources Branch	14	1.61	1.53	1.50	1.46	1.55	1.53
OEP	Management & Operations	8	1.50	1.56	1.39	1.50	1.58	1.50
OEP	Chicago Regional Office	16	1.31	1.46	1.54	1.53	1.50	1.46
OEP	LNG Engineering Branch	9	1.50	1.40	1.44	1.44	1.44	1.44
OEP	Gas Branch 2	13	1.38	1.38	1.54	1.46	1.38	1.43
OEP	Gas Branch 1	11	1.45	1.45	1.38	1.38	1.32	1.39
OEP	Portland Regional Office	16	1.34	1.47	1.41	1.37	1.38	1.39
OEP	Engineering & Jurisdiction Branch	15	1.50	1.33	1.28	1.35	1.46	1.38
OEP	Hydro West Branch 2	11	1.33	1.40	1.40	1.42	1.35	1.38
OEP	Atlanta Regional Office	15	1.31	1.50	1.37	1.34	1.35	1.38
OEP	Hydro East Branch 2	12	1.36	1.40	1.29	1.33	1.27	1.33

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OEP	Gas Branch 3	10	1.33	1.38	1.35	1.28	1.29	1.32
OEP	Certificate Branch 1	11	1.17	1.32	1.32	1.36	1.41	1.31
OEP	Land Resources Branch	15	1.47	1.25	1.23	1.28	1.33	1.31
OEP	Hydro East Branch 1	11	1.33	1.32	1.25	1.27	1.32	1.30
OEP	San Francisco Regional Office	18	1.40	1.26	1.21	1.24	1.19	1.26
OEP	New York Regional Office	24	1.28	1.17	1.23	1.31	1.30	1.26
OEP	Certificate Branch 2	9	1.10	1.22	1.28	1.31	1.38	1.25
OEPI	Group 1	7					2.00	2.00
OEPI	Group 2	6					1.92	1.92
OER	Division of Logistics and Security	7				1.42	1.57	1.50
OER	Division of Reliability Standards	6				1.50	1.42	1.45
OER	Division of Compliance	8				1.38	1.43	1.40
OER	Division of Bulk-Power System Analysis	6				1.40	1.29	1.33
OER	Div of Reliability & Engineering Srvcs	6				1.17	1.50	1.32
OGC	Solicitor	13	1.75	1.81	1.75	1.83	1.85	1.80
OGC	Dispute Resolution Service	5	1.70	1.50				1.60
OGC	Energy Markets	71	1.45	1.54	1.51	1.60	1.62	1.54
OGC	Energy Projects	45	1.42	1.34	1.39	1.34	1.32	1.36
Yearly Average for All FERC Non-Supervisory Employees		990	1.42	1.42	1.41	1.43	1.44	1.42